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COMPENDIUM OF THE LAWS OF MEXICO

OFFICIALLY AUTHORIZED BY THE MEXICAN GOVERNMENT

CONTAINING THE FEDERAL CONSTITUTION, WITH ALL
AMENDMENTS, AND A THOROUGH ABRIDGMENT OF
ALL THE CODES AND SPECIAL LAWS OF IMPORT-
ANCE TO FOREIGNERS CONCERNED WITH BUSI-
NESS IN THE REPUBLIC. ALL ACCURATELY
TRANSLATED INTO ENGLISH. AN EXTEN-
SIVE COLLECTION OF FORMS BOTH IN
SPANISH AND ENGLISH. A MINUTE
INDEX OF ALL MATTER CON-
TAINED IN THE TEXT

BY
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VOL. 1

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1910
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proviene la Ley. Julio de 1910.

AUTHORIZATION.

(Seal of the Department
of Public Instruction
and Fine Arts.)

THE PRESIDENT OF THE REPUBLIC, in accordance with your petition of August 28th, is pleased to grant you permission to publish in English a collection or compilation of Mexican Legislation, comprising the Civil and Commercial Codes, the Code of Civil Procedure, the Laws concerning Foreigners, Notaries, Public Lands, Grand Register of Property, Waters, Mining, Colonization, Banks, Railroads, Insurance, Patents and Trade Marks, the Stamp Law, Weights and Measures, Money, Amparo, Customs Tariff, and the Regulations of said Laws; but upon the condition of subjecting the edition to the authentic text of each one of said legal enactments, as provided by Article 1166 of the aforesaid Civil Code.

I communicate it to you for your information and the purposes aforesaid.

Liberty and Constitution. Mexico, 28 October, 1909.

(Signed) J. SIERRA.

To MR. JOSEPH WHELESS, Lawyer of the Tribunals of the United States of North America.

INSCRIPTION

TO MY DEAREST BEST FRIEND

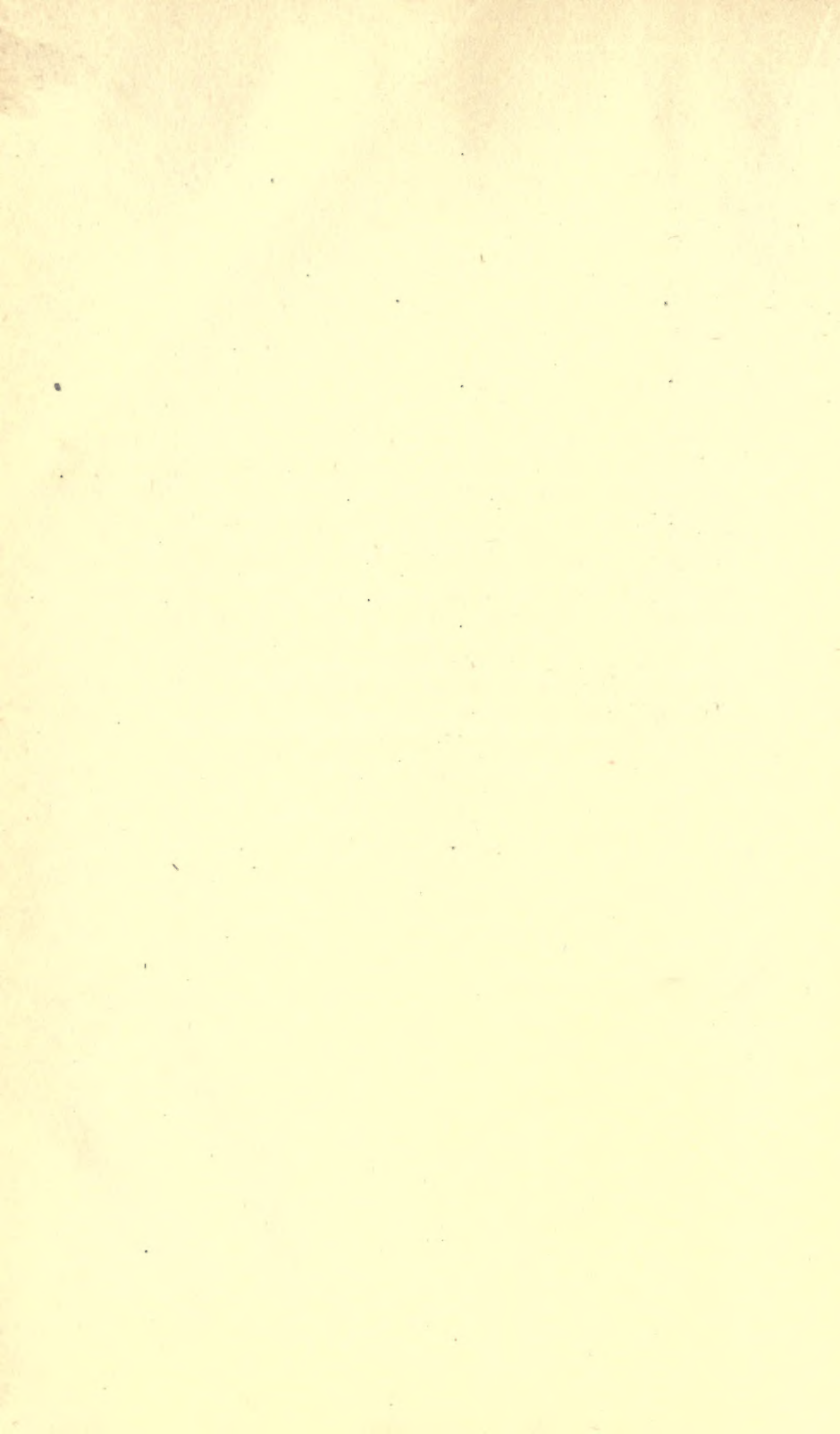
MY WIFE

MAMIE TEASDALE WHELESS

THIS FIRSTFRUITS OF OUR HAPPY INTELLECTUAL UNION

IS LOVINGLY DEDICATED.

J. W.



PREFATORY.

MEXICAN LAW IN ENGLISH.

The Work here presented to the public is the first venture into a highly interesting and important field — the business laws, as we may say, of the Republic of Mexico — the translation into English, in thorough and accurate manner, of the *Corpus Juris Civilis* of the Nation *facile princeps* among the Latin-American, Civil Law nations of the New World. Below will be found a brief but comprehensive statement of the application of the Codes and a view of the legal system of Mexico.

It is herein proposed to lay before the English-speaking business man, investor and capitalist, having or contemplating business in Mexico, as well as before the lawyer who represents interests there, a comprehensive and thoroughly accurate résumé of the whole body of Mexican Law necessary or useful to the knowledge of his rights and obligations, and the proper conduct of his affairs, in a country whose language and laws are distinct from those with which he is familiar. The extended scope of the work, embracing every title of the Law important to foreign interests in the Republic, may be noted from an examination of the Table of Contents prefixed hereto; the thorough detail of treatment of the many topics covered, and the extent of practical suggestion on important subjects, may be gathered from even a cursory perusal of the text and notes thereto appended.

The magnitude of the interests which this Work is designed to serve, by a faithful presentation of the Laws on

which they depend, is strikingly indicated by the words of the Hon. Elihu Root, ex-Secretary of State, and President of the American Society of International Law, in his opening address before that Society, at its fourth annual session, in Washington, April 28, 1910. Illustrating the significance of his subject, "The Basis of Protection to Citizens Residing Abroad," by the signal instance of American interests in Mexico, he said:

"The great accumulation of capital in the money centers of the world, far in excess of the opportunities for home investment, has led to a great increase of international investment extending over the entire surface of the earth, and these investments have naturally been followed by citizens from the investing countries prosecuting and caring for the enterprises in the other countries where their investments are made. For example, it was estimated three or four years ago that within the preceding ten years over seven hundred millions of capital had gone from the United States alone into Mexico for investment; and this capital had been followed by more than forty thousand citizens of the United States who had become resident in Mexico."

The real opportuneness of such a Work may hence be readily appreciated, and that the present effort to meet this actual need is also appreciated is demonstrated by the large advance sale of the Book in response to the first announcement of its preparation.

Two motives have actuated the undertaking of this heavy task. One, as indicated, was the practical purpose of providing a full and accurate knowledge of Mexican Law to the great number of individuals and companies having business interests in Mexico affected by those laws. The other was the more intellectual design of affording to common-law scholars and students of comparative law, a comprehensive view of an admirable system of political and commercial law based upon the enlightened jurisprudence of the Civilians.

COLLECTIONS OF MEXICAN LAW.

As above intimated, no such work as this exists, in English or in Spanish. The laws of Mexico, as of other civil-law countries, consist in several Codes and separate Laws, never collected in any orderly way by public authority. They are published, as issued, through consecutive numbers of the "*Diario Oficial*," or official Government daily, through the medium of which the laws are promulgated, and are left to private enterprise to edit, in numerous small volumes, if at all. Some translations into English exist of separate Codes or Laws, but these are the bare texts of the originals, and almost invariably botched and misdone, very like some linguistic journeyman had done the job, and not done it well at that. <But nothing like "Revised Statutes" or official compilations of laws exist in Spanish,> nor has ever before an attempt to present so comprehensive a view of them in English translation been undertaken.

BIBLIOGRAPHY.

It is proper, both for bibliographical reasons, and to give due credit, to refer to two previous books having some semblance of entering this field of Mexican Law in English. The first of these was Judge Hamilton's "Mexican Law," published in 1882, the greater part of whose edition, I understand, was destroyed by fire just after it left the press. It is entirely obsolete now, as well as out of print, as an entirely new system of Codes and Laws has been enacted since its date, quite revolutionizing the whole *corpus juris* of Mexico, then based on the ancient Spanish laws largely in force in Mexico. A later book, but far less comprehensive, is a "Handbook of Mexican Law," published in July, 1909, by Mr. R. J. Kerr, of Chicago, which is, however, limited to very meager selections from two or three of the Codes and fragments of the Notarial, Stamp and Mining Laws, the latter since superseded by the new Mining Law effective

1 January, 1910. As the former work has now become obsolete, it may not be improper to say, for the guidance of anyone who might turn to it for information on the earlier laws, that the translations are in many respects very imperfect and inaccurate and cannot be trusted. Of the latter work anyone may form his own adequate judgment by comparing any paragraph of it with the original Spanish legal text, or with the corresponding Articles of the Constitution, Codes or Laws as rendered in the present "Compendium."

REMARKS ANENT THE "HANDBOOK."

It is not the province of an author to criticise the work of another, and I shall indulge in no criticism here. The simple indication of facts shall speak for itself. The "Handbook" is offered to the English-speaking public by a lawyer whose nine years' experience "as legal adviser in Mexican matters has resulted in a larger knowledge of Mexican laws"; and that public having, as the author says, "a dense and absolutely inexcusable ignorance of the laws and business conditions in Mexico," it is invited to turn to the "Handbook," as an example of "fidelity in translation," for an accurate knowledge of those laws. The "Handbook" is offered as a "practical help" to "the thousands of Americans who year after year are pouring their money by the millions into Mexico, and the hundreds of lawyers who are called upon for the first time to give advice in some matter involving the law which prevails south of the Rio Grande." As both this public and these lawyers know nought of the Spanish language, and can in no way verify the "fidelity in translation" of the laws translated in the "Handbook," except by the experience of relying on them, to their maybe great loss and damage, I feel it to be a matter of duty to call attention to some instances of serious error of translation. These instances are fair examples of many others, with which practically every

page of the book abounds. To correct them all would be to rewrite the Handbook; to simply mention the principal ones would extend this Preface beyond its due proportions.

These errors, apparent on nearly every page, are both of omission and of commission. The omissions are so great that I venture to say that no subject of the law is stated fully enough to present an adequate knowledge of its rules on any subject. That this is true may be surmised, by any one, from the fact that Chapters of the Mexican Codes, many pages in length, are reduced into a few lines; it may be verified by the most casual comparison with the original text or with the reproduction of the same matter in the pages of this Book.

But of positive errors of commission, there are enough to satisfy. They begin early in the work. In the Introduction, it is stated that the Mexican Congress, "under its general power to regulate commerce," adopted the Commercial Code. But it is not correct. The Federal Constitution, Art. 72, frac. X, was expressly amended, on 14 December, 1883, so as to confer the power "to enact codes of mining and commerce," under which the present Code of Commerce was put into effect.

The Federal Constitution covers forty-eight pages of the "Compendium"; in the "Handbook" it is disposed of in seven. Its first paragraph contains a luminous error. It states, p. 12: "The president may *suspend the constitution*(!) under the authority of congress in cases of grave national danger." But Article 29 simply provides, with many qualifications safeguarding it, that the constituted powers "may suspend the *guaranties* ordained in this Constitution, with exception of those which assure the life of man," — in other words, just our American suspension of the "writ of *habeas corpus*" in grave crises.

In the next line, p. 12, it is stated: "Mexicans are all those born of foreign *parents*"; the correct word is "*fathers*"; it is the Mexican father who confers the nationality,

not the mother or both parents. The same error is repeated on page 20.

Again on the same page 12, it is stated that "foreigners are entitled to *all* constitutional rights and guaranties." But Art. 8 prohibits to foreigners the right of petition, and Art. 9 the right to assemble to take part in political affairs, and the right to "expel pernicious foreigners" is elsewhere declared.

Beginning with the text of the Civil Code, on page 19, the errors, both of omission and of commission, are too numerous to mention. The first line reads, "the civil law protects all"; the correct translation is, "is equal for all." Passing over others, in the last line on the page, the word should be "law" instead of "right"—the Latin "*jus*" being intended by "*derecho*."

On page 20, line 4, "avoid a loss" is rendered "avoid an obligation," and the sentence is otherwise wrong. On the same page a very important provision of law is thus rendered: "Persons owning real estate in Mexico are also subject to the jurisdiction of the courts of the district where the land is situated in all cases where it may be affected by the obligations of the owner, or where obligations entered into by him were to be executed in that district." I cannot unravel the sense of this; the correct meaning of the original is thus rendered, in Art. 148 of the "Compendium": "Mexicans and foreigners resident in Mexico may be sued before the courts of the country on account of obligations contracted with Mexicans or foreigners in or out of Mexico; and may be sued there, although they do not reside in Mexico, if they have property there subject to the obligation contracted, or if such obligations are to be performed in Mexico."

On page 21 "legal existence" is used for "juridical entity" in respect to corporate bodies. There are several other errors on the page.

On page 24, "flocks or herds on ranches whereon the pasturing of animals" forms part of the industry carried on, are included under the definition of real property. The law only

imposes the character of realty on "animals used as *breeding stock* on rural estates devoted wholly or partly to *stock-raising*," a very different proposition. The translation of the following paragraph on personal property is also subject to correction.

On page 25 it is stated that "public property is governed by special laws"; whereas the text reads "is governed by the provisions of the Civil Code when not covered by special laws"; and further declares, "it is subject to all the rules of prescription established by the Code," an important omission from the Handbook.

The matters of omission which occur in every paragraph are beyond all reasonable mention; but they pervert the meaning of almost every rule of law attempted to be stated, as may be verified by any comparison. Only the more important faults of translation can be here pointed out.

On p. 42 a "gratuitous contract" is defined as one "in which only one of the parties assumes an obligation"; the legal definition is, "in which only one of the parties is benefited."

On p. 43 is a signal error, reading: "An oath or a mere promise cannot support an obligation in the absence of a legal consideration." The Code reads: "An oath has no legal effect on a contract, and never by virtue of it or of a promise in place of it, can an obligation be confirmed, if not founded on some other legal cause"; — a "consideration" being unknown to Mexican law, and omitted from the four requisites of a contract stated in the same paragraph of the Handbook.

On the same page, amid many others, is this error: "An error as to rights involved does not void a contract"; the simple reading of the original is, "an error of *law* does not annul a contract." The whole paragraph, on pp. 43–44, is so erroneous that no one can tell what is the law; comparison with Arts. 311–314 herein will illustrate this.

Beginning on p. 45, is a series of errors of much importance. It is stated that contracts exceeding in amount "two

hundred dollars " must be in writing; and frequently "dollars " is mentioned as forming the basis of distinction between the requirement of one formality and another. The Spanish word is " pesos," which is equal to approximately only 50cts in U. S. currency. So the " two hundred dollars " should be only " one hundred dollars," as translated. The importance is obvious. If a reader of the Handbook should make a contract in Mexico for over one hundred dollars, otherwise than in writing (and for over six months time), it would be void, and his reliance on the " two hundred dollars " stated in the text would be in vain. This error occurs very often, and its results might be very mischievous.

On p. 48 it is flatly stated, " contracts can only be rescinded or modified by mutual consent of the parties," entirely omitting the very extensive proviso, " except as otherwise provided by law,"— which renders contracts subject to rescission for a number of causes, some of which are stated in the same paragraph. The next sentence declares that rights and obligations under contracts may be assigned " unless they are purely personal by nature," omitting the other two exceptions, " by the terms of the contract or by disposition of law."

Every page along here abounds with the like, perverting the sense of nearly every sentence.

On p. 50 are several. " Damage means the loss or depreciation which a party to the contract may have actually suffered by the default "; how a *person* may suffer " depreciation " by a breach of contract is not indicated; " depreciation in estate " is more nearly a correct rendition of the definition of "*daños*." Again, " damages are not allowed for mental loss or affliction, unless," etc. Nothing like this is meant; reference to Art. 349, bottom of p. 186 and top of p. 187, will explain the law attempted to be stated.

But this must not be too long extended, as it would be by pausing over even every glaring mis-translation. Only now by reference to Articles of the " Compendium " where the

law is correctly stated, may a few other perversions be pointed out. But, first, on p. 56, it is stated that "*lesión automatically* operates to rescind the contract"; but *lesión* is only a ground of an *action for rescission*, which prescribes in four years, as stated in the same paragraph, and may be waived altogether. The first paragraph on p. 79 is just the reverse of the law as stated in Art. 702, second paragraph, of the Compendium. On p. 93, the Chapter on "Compromises" is rendered "Settlements," which is a very different thing; all compromises are in effect settlements, but the large majority of settlements are not compromises. On p. 97 it is stated, "the doctor and minister who attend the deceased in his last illness cannot inherit *even when* legal heirs," but the law only disqualifies them "*unless* they are also his legal heirs," Art. 511.

This must suffice to show the general average of accuracy of translation of the "Handbook of Mexican Law." I must make reference to one other matter, not immediately related to the work in hand, but referred to therein, the same author's "Translation of the Mining Law of Mexico," in which errors of the same character abound. Its opening paragraph, on page 1, recites, as subject to the provisions of this law: "The products of all the inorganic substances which, occurring in either vertical or horizontal veins, or in masses of whatever form, make up deposits," etc. There is nothing in the Mining Law about "*products* of inorganic substances," nor concerning the "*lay*" of the veins; the law reads: "Deposits (*criaderos*) of all inorganic substances which in veins or masses of any form constitute deposits whose composition is distinct from that of the rocks of the earth." One other instance, from the same work, must bring this résumé to a close. Art. 25 of the Mining Regulations, frac. V, respecting plans of mining properties, provides for a marker to indicate the astronomical meridian, "which will be represented by a line parallel to the right edge of the paper of the plan, and so *oriented* that its upper end will indicate the astronomical

north," in other words, the upper end of the line will indicate the north, a very simple device, and universally in use on maps and plats. But as these Regulations are given to the world in translation, p. 40, "this shall be represented by a line parallel to the right edge of the paper on which the map is printed"—(it is only a *drawing*)—"and turned to the eastward enough so that its upper point will indicate the astronomical north"! How may a line, drawn on a piece of paper, "be turned to the eastward enough so as to indicate the north"? The author must have had a merry struggle with the verb "*orientar*" in order to make a line turn *orient-ward enough so that it would point to the north!* Thus, throughout, *ignotium per ignotius*.

PLAN AND SCOPE OF THE "COMPENDIUM."

In the Book here offered to meet the practical requirements of the interested business public, as well as the critical judgment of the legal profession, a serious and conscientious endeavor is made to present a work alike creditable to the author, worthy of the important subject-matter with which it deals, and confidently satisfactory to all the demands made upon its contents by business man, investor, lawyer or student of the laws, who needs to know accurately what he seeks from its pages. The standard which I have set and kept constantly before me throughout in carrying my proposed plan into execution, has been, to make a volume such as I myself would wish to have in my hands had I any need to examine for my own purposes the laws of Mexico; a work so thorough that I would know that the entire law of the subject was before me, and so accurate in translation and statement that I would be confident that it correctly informed my mind in the matter under inquiry. That this design has been amply realized I am satisfied, and submit the work to the public in the confidence that when weighed in the balance of practical requirement it will not be found wanting in any of the particulars indicated. So far as con-

scientific effort and painstaking care may avoid or minimize human errancy, there are no errors either of translation or of legal statement in the entire text of the work. While this is a large claim for accuracy, in view of the difficulty of rendering a technical legal work from one language into another, I feel that it has been substantially accomplished, and that the Mexican Law herein stated may be relied upon as correct, and that no errors of legal substance will be anywhere found in these pages.

A few words as to the plan and method followed may well be in order. The Civil Code of Mexico, under the provisions of which this work was officially authorized by the Government, requires that the translation be "subjected to the authentic text of the laws." This requirement has been scrupulously observed throughout. But the original text of all the Codes and Laws, if fully and literally translated, would result in a very bulky tome, which would be largely made up of what Falstaff calls "most damnable iteration," for the Mexican Legislation, though aiming at precision, is far from being concise, and much matter is duplicated from one Article to another. Again, while the general plan of the Codes is one of scientific arrangement of Books, Titles and Chapters, yet within the Chapters there are many faults of logical sequence of Articles, resulting in many instances of a trying disarrangement of logical order of statement of cognate propositions of law. My plan seeks to collate all the provisions of the law on each general topic into one orderly and complete statement. My first concern was then to pick out from a Chapter all the scattered Articles bearing on a given proposition; these were then carefully studied and digested in mind, and the full legal content of all such Articles was then condensed or abridged into one new Article which completely preserves the entire substance of the original text, and omits only repetition or redundant matter. This done, some apt head-lines were selected and prefixed to indicate the subject-matter

of my new Article, and at the end the several Articles of the original Law are cited in order to facilitate ready reference to the original sources, for confirmation of the translation, or for its literal text.

The translation itself is not designed to be literal, as of necessity it could not be in an abridgment or compendium. But it is perfectly faithful to the sense and meaning of the original texts throughout. The Federal Constitution is translated in full and literally, so far as to be literal in a translation is possible. Numerous other portions of the original texts are given literally and in full where their importance or character requires a textual statement. At other times the original is followed as closely as the necessity for condensation permits; but I repeat that in whatever form of treatment, the entire substance of the Mexican Law is faithfully given. Nothing is omitted, of substance, and only occasionally details which are entirely immaterial to the complete understanding of the subject-matter, or administrative or clerical details concerning in no wise the practical purposes for which the work is intended. In a few instances some Articles or even Chapters of a Code or Law are omitted; such omissions are noted at the place, and are of a character entirely foreign to any practical purpose. In all other particulars the work is complete and thorough.

The only omissions of matter originally intended to be included in the work are of four Laws, those concerning Railroads, Banks, Insurance Companies, and that Book of the Code of Commerce on "Maritime Law." This was rendered necessary by two considerations: these are very special Laws, of great length and detail, and concern very few persons, and to include them would add greatly to the size of this work without adding materially to its practical value. Their space has been well supplied by the addition of other matter, such as the special Chapters on foreign and domestic Corporations in Mexico, their formation, the conduct of their business, and the protocolization of their charters and of

other legal documents, which more than compensates the omission of these Laws. The Book of Forms, too, is enlarged by the addition of several important instruments, such as corporate Charters, Deeds of Conveyance, Mortgages, Powers of Attorney, etc., necessarily lengthy, but which will no doubt add largely to the general usefulness of the Work and serve to practically illustrate many points of law which otherwise might be obscure.

An especially valuable feature is the minutely detailed Index to the volume, which will enable immediate and easy reference to any point of law, word or definition which may be sought. Taken together they form a complete Glossary, which will prove an *open sesame* to the wealth of legal text and commentary, and will give the practical man and the lawyer an intimate knowledge of the whole scope of the substantive law of Mexico herein contained.

TRANSLATIONS.

The translation of all these Spanish texts into English was made by the author in person, and its correctness, and the faithfulness of the English version to the original text, is assured. Naturally it is difficult, and at times impossible, to render into English the legal and technical terms of the Spanish language; but in every instance the accurate significance of the terms employed in the Mexican laws is clearly given. The practice, deemed to be a wise one, has been followed, in respect of the Spanish terms of more frequent use in the laws, after once fully explaining their meaning, of thereafter employing the Spanish word wherever it occurs. Examples are such legal terms as *pertenencias*, *demasías*, *baldíos*, of the Mining and Land Laws; *escritura pública*, *testimonio*, *derecho del tanto*, of the Notarial and Conveyancing Laws, etc. Many of these terms, besides having no exact equivalent in English, are of such constant recurrence in the laws and in popular speech on the subjects

to which they pertain, that, besides avoiding much repetition of circuitous renditions, it seems desirable that persons interested in these subjects should be familiar with the every-day nomenclature of such subjects in the language of the country to which they are indigenous. It is, for example, much readier and simpler to say simply "*demasía*," than to stumble about for some involved circumlocution to express not nearly so well the idea. A glossary of all such terms is found in the Index, to which ready reference may be made if once the defined meaning escapes the memory.

THE CONSTITUTIONAL SYSTEM OF MEXICO.

In Mexico each of the twenty-seven States is "free and sovereign," as recited in all their acts and decrees. Each has its "Congreso," composed of a single legislative chamber of "Diputados," created under the constitution of the respective State; and each State has in legal theory plenary power of legislation except as limited by its own and the Federal Constitution. In practice there are many limitations on "State Sovereignty," several of which are important to notice for the purposes of the present work, as they operate to make Mexico, for the foreigner, as well as for the Mexican, much more a single Government, under a single and uniform system of laws, than is true in the United States with their nearly fifty dissimilar jurisdictions.

It will first be noticed, that instead of the several States creating the Constitution, the Constitution apparently created the several States, which are all named and their boundaries defined, in Arts. 43 to 49. Under Art. 72B. fraction V, the President has powers, which may be construed with more or less latitude, in respect to the appointment of governors within the States; and in practice the States are accustomed to report many of their acts to the Federal Government or to the Congress; indeed, "Relations with the States," which are much closer than in the United States, is one of the functions of the Department of "Gobernación,"

as defined in Art. 133. The distribution of all the executive functions of the government to the several Departments of State, is set out in Arts. 131-140. It is doubted that any State would enact any law which was disapproved of by the General Government.

THE CODES AND LAWS.

While, as above indicated, each State may legislate for itself, and in terms of law does so, yet as matter of fact, the Codes and principal laws of the several States are practically *verbatim* copies of those enacted by the General Government for the Federal District and Territories, which are under exclusive Federal jurisdiction. Particularly is this true of the Civil Code, which has been adopted and reënacted, *mutatis mutandi*, and with no substantial differences, by all the Mexican States. The Code of Civil Procedure and the Penal Code are likewise in practical operation in the several States. The Code of Commerce is a Federal enactment, by virtue of Art. 72, fraction X, of the Constitution, and is obligatory throughout the Republic. With the exception of the Notarial Law, which is copied substantially in all the States, all the special Laws herein reproduced are Federal statutes and of course of general obligation in all Mexico. So that all the Law as presented in this "Compendium" is in an accurate sense the "Laws of Mexico," and may be taken as authentic and be accorded "full faith and credit" by all concerned in having a knowledge of them.

ADVERTISEMENT.

As this Work is designed principally for those having business interests in a foreign country, and who are supposedly otherwise unfamiliar with its laws and maybe with its language, it is deemed not improper to add, that the author, either at his St. Louis or Mexico City office, will be pleased to furnish any information desired on legal or business mat-

ters in Mexico, and to render services in any and all affairs connected with foreign interests in Mexico, in the several Courts and Departments of Government of the Federation or of its several States.

ACKNOWLEDGMENTS.

To several of my good friends who have aided me in this arduous work my thanks are due and are heartily tendered. To the Lics. Manuel Septi  n, Manuel Cervantes Rend  n, C  rlos Trejo Lerdo de Tejada, Heriberto Ramos Cuevas, and Burton W. Wilson and E. Dean Fuller, Esqs., scholarly members of the learned Mexico City Bar; to the Hon. Arnold Shanklin, American Consul General in Mexico City, and to the Hon. Alexander Del Mar, of New York City, I tender public thanks for their many valuable suggestions and contributions of important text or data.

L'ENVOI.

In the hope and belief that the Work here offered to the Public will prove of no little value to the great interests developed by English-speaking investors in Mexico, and will contribute materially to the further development of business and friendly relations with that exceedingly wealthy and *simp  tica* Republic, which has now fully entered upon the realization of the high destiny to which it has been called forth out of political Chaos by the genius of Don Porfirio D  az and his galaxy of brilliant coadjutant statesmen, the Author respectfully submits it to the Reader.

JOSEPH WHELESS.

ST. LOUIS, MO., U. S. A.

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FEDERAL CONSTITUTION OF THE MEXICAN
UNITED STATES

SANCTIONED AND SWORN BY THE GENERAL CONSTITUENT
CONGRESS THE 5TH DAY OF FEBRUARY, 1857.

IGNACIO COMONFORT, Substitute President of the Mexican Republic, to its inhabitants, Know Ye:

That the extraordinary constituent Congress has decreed the following:

In the name of God and with the authority of the Mexican People:

The Representatives of the different States, of the District and Territories which compose the Republic of Mexico, called by the Plan proclaimed in Ayutla the 1 March, 1854, reformed in Acapulco the 11th day of the same month and year, and by the Convocatory issued the 17 October, 1855,

¹ The following translation of the Constitution of Mexico, with its several Amendments (just sixty) to date, was made by me anew from the original text, and may be taken as accurate in every particular, the Spanish text being at times so literally followed, that the only defect which I believe will be found is the loss of freedom of the English idiom, which is sacrificed to the textual faithfulness of the translation.
—The Author.

to constitute the Nation under the form of a democratic, representative, popular Republic, in the exercise of the powers with which they are invested, comply with their high charge, decreeing the following:

POLITICAL CONSTITUTION of the Mexican Republic, upon the indestructible base of its legitimate independence, proclaimed the 16 September, 1810, and consummated the 27 September, 1821.

TITLE I.

SECTION I.

OF THE RIGHTS OF MAN.

Art 1. The Mexican people recognizes that the rights of man are the basis and the object of social institutions. It therefore declares, that all the laws and all the authorities of the country must respect and sustain the guaranties ordained by the present Constitution.

Art 2. All are born free in the Republic. Slaves who set foot upon the national territory recover, by that sole fact, their liberty, and have right to the protection of the laws.

Art. 3. Learning is free. The law shall determine what professions require a diploma (*título*) for their exercise, and with what requisites they shall be issued.

Art. 4. Every man is free to embrace the profession, trade or work which he pleases, if it be useful and honest, and to enjoy its rewards. He cannot be molested in either, unless by judicial sentence when he attacks the rights of third persons, or by governmental resolution, dictated in the terms prescribed by law, when he offends the rights of society.

Art. 5. No one can be obliged to render personal service without just compensation and without his full consent, except work imposed as a penalty by judicial authority.

In regard to public services, that of bearing arms can only be obligatory, and the electoral functions, municipal offices and the duties of jury service, obligatory and gratuitous, in the terms established by the respective laws.

The State cannot permit effect to be given to any contract, pact or agreement having for its object the restraint, the loss, or the irrevocable sacrifice of the liberty of man, whether on account of work, of education or of religious vows.

The law, therefore, does not recognize monastic orders, and can not permit their establishment, whatever be the denomination or object for which they are sought to be established. Neither shall any contract be permitted in which a man stipulates for his own proscription or exile.²

Art. 6. The manifestation of ideas shall not be the object of any inquisition, judicial or administrative, except in the event that it attacks morals or the rights of third persons, provokes to any crime or offense, or disturbs the public order.

Art. 7. The liberty of writing and of publishing writings on whatsoever subject, is inviolable. No law or authority shall establish previous censorship, nor exact bonds from authors or printers, nor restrict the liberty of the press, which has no other limits than respect for private life, for morals, and for the public peace. The crimes which may be committed by means of the press shall be tried by the competent Tribunals of the Federation, or by those of the States, of the Federal District and Territory of Lower California, according to their penal legislation.³

² Amendment of June 10, 1898.

³ Amendment of 15 May, 1883. Offenses against the liberty of the press are punished by Arts. 966 and 967, of the Federal Penal Code, of December, 1871.

Art. 8. The right of petition, exercised in writing, and in a pacific and respectful manner, is inviolable; but in political matters it can only be exercised by citizens of the Republic. To all petitions shall be returned the written decision of the authority to whom they are addressed, upon whom the obligation is imposed of making known the result to the petitioner.⁴

Art. 9. No one shall be restricted in the right to associate or meet together pacifically for whatsoever lawful object; but only citizens of the Republic can assemble in order to take part in the political affairs of the country. No armed assembly has the right of deliberation.

Art. 10. Every man has the right to possess and carry arms, for his security and legitimate defense. The law shall determine what arms shall be prohibited, and the penalty incurred for carrying them.

Art. 11. All men have the right of entering and leaving the Republic, of traveling through its territory, and of changing their residence, without the necessity of letters of security, passports, safe-conducts, or other similar requisite. The exercise of this right shall be subordinate to the faculties of the judicial or administrative authority in cases of criminal or civil responsibility, and to the limitations imposed by the law upon emigration, immigration and the general health of the country.⁵

Art. 12. There are not, nor shall there be recognized in the Republic, titles of nobility, nor prerogatives, nor hereditary honors. The people only, legitimately represented,

⁴ Art. 1006 of the Federal Penal Code of 1871 prescribes the penalty imposed on public officials who violate this section by failing to act upon a petition and to notify the petitioner of such action.

⁵ Amendment of 27 October, 1908. See Art. 72, fraction XXI. and note 33 to same.

may decree recompenses in honor of those who have rendered or may render eminent services to their country or to humanity.

Art. 13. In the Mexican Republic no one shall be judged by especial (*privativas*) laws nor by special tribunals. No person or corporation can have privileges (*fueros*), nor enjoy emoluments, which are not in compensation for a public service and are fixed by law. Military law shall exist only for those crimes and offenses which have strict connection with military discipline. The law shall prescribe with all clearness the cases within this exception.

Art. 14. No retroactive law shall be passed. No one shall be judged or sentenced except under laws made prior to the fact and exactly applicable to the case, and by a tribunal which shall have been previously established by law.⁶

Art. 15. Treaties shall never be made for the extradition of political offenders, nor for that of those ordinary criminals who have held the condition of slaves in the country where they committed the crime; nor shall conventions or treaties be made by virtue of which are altered the guaranties and rights which this Constitution secures to the man and to the citizen.

Art. 16. No one can be molested in his person, family, domicile, papers and possessions, except by virtue of a written order of the competent authority, which shall set out and declare the legal cause of the proceeding. In cases of *in flagrante delicto*, all persons may apprehend the offender and

⁶ Amendment proposed: Art. 14. No law shall have a retroactive effect. No one shall be judged or sentenced except by laws made prior to the fact and applied to it by the tribunal which the law shall have previously established. In civil matters, if there should be no express law (*ley*) the controversy shall be decided according to the general principles of law (*derecho*).

his accomplices, placing them without delay at the disposition of the nearest authority.⁷

Art. 17. No one can be arrested for debts of a purely civil character. No one may exercise violence to reclaim his rights. The Tribunals shall always be expeditious in administering justice; this shall be free; therefore, judicial costs are abolished.⁸

Art. 18. Imprisonment shall only be inflicted for crimes which merit corporal punishment. In whatever stage of the proceedings it shall appear that the accused is not liable to such penalty, he shall be put at liberty under bail. In no case shall imprisonment or detention be prolonged for default of payment of fees or any other pecuniary demands.

Art. 19. No detention shall exceed the term of three days, except upon a formal warrant of imprisonment setting forth legal cause and complying with the other requirements of the law. The mere lapse of this term renders responsible the authority who orders or consents to it, and all the agents, officers, wardens or jailers who execute it. All maltreatment in the arrest or confinement of prisoners, all hardships inflicted without legal cause, and all exactions of money in prisons, are abuses which the laws shall correct and the authorities severely punish.⁹

Art. 20. In all criminal trials the accused shall have the

⁷ Breaking into dwellings, searching and seizure of papers, is punished by Arts. 985 to 987 of the Federal Penal Code.

⁸ Art. 1007 of the Federal Penal Code prescribes the penalty to the Judge, or other functionary, who under whatever pretext, even the obscurity or silence of the law, fails to promptly decide any matter pending before him.

⁹ Those responsible for violations of personal liberty and for arbitrary detention and imprisonment, are penalized by Arts. 980-984 of the Federal Penal Code.

following guaranties: 1, That he shall be informed of the cause of the proceeding and the name of the accuser, if there be one; 2, that his preparatory declaration be taken within forty-eight hours, computed from the time when he is at the disposition of his judge; 3, that he be confronted with the witnesses who testify against him; 4, that he be furnished with the information which he may need, appearing in the record, in order to prepare his defense; 5, that of being heard in defense by himself or by counsel (*ó por persona de su confianza*), or by both, as he may desire. In case of having no one to defend him, he shall be presented the list of official defenders (*defensores de oficio*), that he may select the one or the ones whom he may desire.

Art. 21. The imposition of penalties, properly so called, belongs exclusively to the judicial authority. The political or administrative authority can only impose, by way of correction, fines not exceeding five hundred pesos, and confinement not exceeding one month, in the cases and in the manner expressly determined by law.

Art. 22. Forever prohibited are the penalties of mutilation, and of infamy, branding, flogging, the *bastinado*, torture of every species, excessive fines, confiscation of property, and all other unusual or excessive punishments.

Art. 23. The penalty of death for political offenses is abolished. It can only be imposed, in regard to other crimes, upon the traitor to his country in foreign wars, upon the parricide, upon the murderer by treachery, with premeditation or for profit, upon kidnappers, highwaymen, pirates, and those guilty of grave offenses of the military order.¹⁰

Art. 24. No criminal cause shall have more than three

¹⁰ Amendment of 14 May, 1901.

instances. No one shall be tried twice for the same offense, whether he be acquitted or condemned on the trial. The practice of entering *nolle prosequi* (*absolver de la instancia*) is abolished.

Art. 25. Sealed correspondence passing through the mails is free from all examination. The violation of this guaranty is an offense which the law shall severely punish.

Art. 26. In time of peace no soldier shall exact quarters, transportation, or other real or personal service, without the consent of the proprietor. In time of war it may only be required in the manner prescribed by law.

Art. 27. Private property cannot be occupied without the consent of the owner, except in cases of public utility, and with previous compensation. The law shall prescribe the authority which shall make the expropriation in such cases, and the requisites for its exercise.

Religious corporations and institutions, of whatever character, denomination, duration or object, and civil corporations which are under the patronage, direction or administration of the former, or of the ministers of any sect, shall have no legal capacity to acquire the ownership of or to administer any other real estate than the buildings which are destined immediately and directly to the service or purpose of such corporations or institutions. Neither shall they acquire or administer funds secured by real estate.

Civil corporations and institutions, other than as above prohibited, may acquire and administer, besides the foregoing buildings, such real estate and funds charged upon it, as may be required for their support and for the purposes for which they exist, but subject to the requisites and limitations which may be prescribed by the federal law which the Congress of the Union may enact for the purpose.¹¹

¹¹ Amendment of 14 May, 1901.

Art. 28. There shall be neither monopolies, nor forestalling (*estancos*) of any kind, nor agreements in restraint of trade, excepting solely such as relate to the coinage of money, to the mails, and to those privileges which, for a limited time, are granted by law to inventors and those who perfect any useful improvement.

Art. 29. In cases of invasion, grave disturbance of the public peace, or whatever others may involve society in great peril or conflict, only the President of the Republic, with the concurrence of the Council of Ministers and with the approbation of the Congress of the Union, or in its recess, with that of the Permanent Deputation, can suspend the guaranties ordained by this Constitution, with exception of those which assure the life of man; but such suspension shall only be for a limited time, by means of general provisions, and such suspension shall not be limited to particular individuals. If the suspension should occur during the session of Congress, it shall grant such powers as it may deem necessary to enable the Executive to meet the situation. If the suspension should occur during a recess, the Permanent Deputation shall without delay convoke Congress in order that it may grant the foregoing powers.

SECTION II

OF MEXICANS.

Art. 30. Mexicans are: I. Those who are born within or without the Republic, of Mexican fathers. II. Foreigners who become naturalized according to the laws of the Federation. III. Foreigners who acquire real estate in the Republic, or who have Mexican children, provided that

they do not manifest their intention to retain their nationality.¹²

Art. 31. It is the obligation of every Mexican: I. To defend the independence, the territory, the honor, the rights and the interests of his country. II. To render his services in the Army or National Guard, according to the respective organic laws. III. To contribute to the public expenses, as well of the Federation as of the State and Municipality in which he lives, in the proportional and equitable manner which the laws shall prescribe.¹³

Art. 32. Mexicans shall be preferred to foreigners, under equality of circumstances, for all public employments, trusts and commissions within the appointment of the authorities, in which the quality of citizenship is not indispensable. Laws shall be enacted for improving the condition of industrious Mexicans, rewarding those who distinguish themselves in any art or science, stimulating industry, and founding colleges and practical schools of arts and crafts.

SECTION III.

OF FOREIGNERS.

Art. 33. Foreigners are those who do not possess the qualifications determined in Article 30. They are entitled to the guaranties established by Section I, Title I, of the present Constitution, excepting in all cases the faculty which the Government has to expel pernicious foreigners. They have the obligation to contribute towards the public expenses in the manner prescribed by law, and to obey and respect the

¹² The Mexican *Ley de Extranjería*, or Law of Foreigners, of 28 May, 1886, and complementary laws to this, fully cover all matters relating to nationality of Mexicans and foreigners and to naturalization; they are set out herein.

¹³ Amendment of 10 June, 1898.

institutions, laws and authorities of the country, and to submit to the judgments and sentences of the tribunals, without the power to seek other recourses than those which the laws grant to Mexicans.¹⁴

SECTION IV.

OF MEXICAN CITIZENS.

Art. 34. All those are citizens of the Republic, who having the quality of Mexicans, have also the following qualifications: I. Being eighteen years of age, if married, or twenty-one years of age if unmarried. II. Having an honest means of livelihood.

Art. 35. The prerogatives of citizens are: I. To vote at popular elections. II. To be voted for, for all offices subject to popular election, and to be appointed to any other employment or commission, if they have the qualifications established by law. III. To associate together to discuss the political affairs of the country. IV. To take arms in the Army or National Guard in defense of the Republic and its institutions, in the terms prescribed by law.¹⁵ V. To exercise in all cases the right of petition.

Art. 36. It is obligatory upon every citizen of the Republic: I. To be registered in the poll-books of his municipality, stating what property he has, or the industry, profession or labor by which he subsists. II. To enlist in the National Guard. III. To vote at the popular elections in the district to which he belongs. IV. To discharge the duties of offices which are subject to popular election, which in no case shall be gratuitous.

¹⁴ Art. 2 of the *Ley de Extranjeria* determines who are to be considered as foreigners. See, *post*, Art. 823.

¹⁵ Amendment of 10 June, 1898.

Art. 37. The character of citizenship shall be lost: I. By naturalization in a foreign country. II. By serving officially the Government of another country, or by accepting from it decorations, titles or functions, without the previous permission of the Federal Congress, except literary, scientific or humanitarian titles, which may be accepted freely.

Art. 38. The law shall prescribe the cases and the form in which the rights of citizenship may be lost or suspended, and the manner in which they may be regained.

TITLE II.

SECTION I.

OF NATIONAL SOVEREIGNTY AND THE FORM OF GOVERNMENT.

Art. 39. The national sovereignty resides essentially and originally in the people. All public power springs from the people and is instituted for their benefit. The people have at all times the inalienable right to alter or modify the form of their government.

Art. 40. It is the will of the Mexican people to constitute themselves a federal, democratic, representative Republic, composed of free and sovereign States in all that concerns their interior government, but united in a Federation established according to the principles of this fundamental law.

Art. 41. The people exercise their sovereignty through the powers of the Union in the cases within its jurisdiction, and through those of the States, in all that relates to their internal affairs, in the terms respectively established by this Federal Constitution and by the Constitutions of the States, which latter shall in no event contravene the stipulations of the Federal compact.

SECTION II.

OF THE INTEGRAL PARTS OF THE FEDERATION AND OF THE NATIONAL TERRITORY.

Art. 42. The national territory comprises that of the integral parts of the Federation and also that of the adjacent islands in both oceans.

Art. 43. The integral parts of the Federation are: the States of Aguascalientes, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nuevo León, Oaxaca, Puebla, Querétaro, San Luís Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Valle de México, Veracruz, Yucatán, Zacatecas, the Territory of Baja California (Lower California), the Territory of Tepic (formed from the seventh Cantón of Jalisco), and the Territory of Quintana Roo.¹

The territory of Quintana Roo shall be formed from the eastern portion of the peninsula of Yucatán, which latter shall be bounded by a dividing line which, starting from the north coast of the Gulf of Mexico, follows the arch of the meridian $87^{\circ} 32'$ (longitude west from Greenwich), to its intersection with the 21st parallel, and thence continues until its juncture with the parallel which passes through the tower south of Chemax, twenty kilometers to the east of this point; and proceeding thence to the vertex of the angle formed by the lines which divide the States of Yucatán and Campeche, near Put, thence southward to the parallel forming the boundary between the Republics of Mexico and Guatemala.

Art. 44. The States of Aguascalientes, Chiapas, Chihuahua, Durango, Guerrero, México, Puebla, Querétaro, Si-

¹ Amendment of 24 November, 1902.

naloa, Sonora, Tamaulipas, and the Territory of Baja California, shall preserve the limits which they now have.

Art. 45. The States of Colima and Tlaxcala shall retain in their new character as States the limits which they have had as Territories of the Federation.

Art. 46. The State of Valle de México shall be formed from the territory which now comprises the Federal District; but its erection into a State shall only have effect when the Supreme Federal Powers shall be removed to another place.

Art. 47. The State of Nuevo León and Coahuila shall comprise the territory which heretofore composed the two States of which it is now formed, except the part of the hacienda of Bonanza, which shall be reincorporated in Zacatecas, on the same terms as it was before its incorporation with Coahuila.²

Art. 48. The States of Guanajuato, Jalisco, Michoacán, Oaxaca, San Luís Potosí, Tabasco, Veracruz, Yucatán and Zacatecas recover the extension and limits which they had on 31 December, 1852, with the alterations established in the following Article.

Art. 49. The town of Contepec, which has belonged to Guanajuato, shall be incorporated with Michoacán. The Municipality of Ahualulco, which has belonged to Zacatecas, shall be incorporated with San Luís Potosí. The Municipalities of Ojo Caliente and San Francisco de los Adames, which have belonged to San Luís, together with the towns of Nueva Tlaxcala and San Andrés del Teul, which have be-

² As is seen, Nuevo León and Coahuila formed a single State at the time of the Constitution, and so remained until the decree of 18 November, 1868, erected Coahuila into an independent State, with the name of "Coahuila de Zaragoza."

longed to Jalisco, shall be incorporated with Zacatecas. The Department of Tuxpán shall continue to form a part of Veracruz. The Cantón of Huimanguillo, which has belonged to Veracruz, shall be incorporated with Tabasco.

TITLE III.

OF THE DIVISION OF POWERS.

Art. 50. The Supreme Power of the Federation is divided for its exercise into Legislative, Executive and Judicial. Never can two or more of these powers be united in one person or corporation, nor the legislative power be vested in one individual.

SECTION I.

OF THE LEGISLATIVE POWER.

Art. 51. The Legislative Power of the Nation shall be vested in a General Congress, which shall be divided into two Chambers, one of Deputies and the other of Senators.¹

PARAGRAPH I.

OF THE ELECTION AND INSTALLATION OF THE CONGRESS.

Art. 52. The Chamber of Deputies shall be composed of representatives of the Nation, elected entirely anew every two years, by the Mexican citizens.²

Art. 53. There shall be elected one proprietary Deputy

¹ Amendment of 13 November, 1874.

² Amendment of 13 November, 1874.

for each sixty thousand inhabitants or fraction over twenty thousand, according to the general census of the Federal District and that of each State and Territory. The population of any State or Territory which is less than that herein fixed, will, nevertheless, elect one proprietary Deputy.³

Art. 54. For each proprietary Deputy there shall be appointed also a Substitute (*suplente*).

Art. 55. The election for Deputies shall be indirect in the first degree, and by secret ballot (*escrutinio secreto*), in the manner which shall be prescribed by the electoral law.⁴

Art. 56. To be eligible as a Deputy it is required: to be a Mexican citizen in the full exercise of his rights; to have completed twenty-five years, on the day of the opening of the sessions; to be a resident of the State or Territory for which elected, and to belong to no Ecclesiastic Order. Residence is not lost by absence in the discharge of any public office bestowed by popular election.

Art. 57. The positions of Deputy and Senator are incompatible with any commission or employment of the Union for which a salary is received.⁵

Art. 58. Proprietary Deputies and Senators, from the day of their election until the end of their term, cannot accept any commission or employment within the nomination of the Federal Executive, to which a salary is attached, without the previous license of their respective Chambers. The same requisite is necessary for the Substitute Deputies and Senators during service.⁶

A. The Senate shall be composed of two Senators for

³ Amendment of 18 December, 1901.

⁴ The electoral law at present in force is that of 18 December, 1901, with the amendments effected by the laws of 24 May, 1904.

⁵ Amendment of 13 November, 1874.

⁶ Amendment of 13 November, 1874.

each State and two for the Federal District. The election of Senators shall be indirect in the first degree. The Legislature of each State shall declare elected him who shall obtain the absolute majority of the votes cast, or shall choose between those who shall have obtained a relative majority, under the terms prescribed by the electoral law. For each Senator a Substitute (*suplente*) shall be elected.⁷

B. The Senate shall be renewed one-half every two years. The Senators chosen for the second class (*en segundo lugar*), shall cease at the end of the first two years, and thereafter the older ones (*y en lo sucesivo los más antiguos*).

C. To be eligible as Senator the same qualifications are required as for Deputy, except that of age, which shall be full thirty years on the day of the opening of the sessions.⁸

Art. 59. The Deputies and Senators shall be inviolable for their opinions expressed in the discharge of their functions, and shall never be called to account for them.⁹

Art. 60. Each Chamber shall be the judge of the election of its members, and shall decide any questions which arise in regard thereto.¹⁰

Art. 61. The Chambers cannot open their sessions nor exercise their trust without the concurrence, in the Senate, of two-thirds, and in the Chamber of Deputies, of more than one-half, of the total number of their members; but those present of both Chambers shall convene on the day appointed by law, and compel the attendance of absent members, under the penalties provided by law.¹¹

⁷ The law regarding the election of Senators is that of 18 December, 1901.

⁸ Amendments of 13 November, 1874.

⁹ Amendment of 13 November, 1874.

¹⁰ Amendment of 13 November, 1874.

¹¹ Amendment of 13 November, 1874.

Art. 62. The Congress shall hold two ordinary sessions each year; the first shall begin on the 16th day of September and end on the 15th day of December, but may be prolonged (*prorrogable*) for thirty business days (*días útiles*); and the second, which may be prolonged for fifteen business days, shall begin on the 1st of April and end on the last day of the month of May.¹²

Art. 63. The President of the Union shall attend at the opening of the sessions of the Congress, and shall deliver a speech (*discurso*) in which he shall set forth the state of the country. The President of the Congress shall reply in general terms.

Art. 64. Every resolution of the Congress shall have the character of a law or of a decree (*tendrá el carácter de una ley ó decreto*). The laws and decrees shall be communicated to the Executive, signed by the Presidents of both Chambers, and by a secretary of each of them, and shall be promulgated in this form: “*El Congreso de los Estados-Unidos Mexicanos, decreta*”: “The Congress of the Mexican United States, decrees” (text of the law or decree).¹³

PARAGRAPH II.

OF THE INITIATION AND PASSAGE OF LAWS.

Art. 65. The right to initiate laws or decrees pertains: I. To the President of the Union. II. To the Deputies and Senators of the Federal Congress. III. To the Legislatures of the States.¹⁴

Art. 66. The bills (*iniciativas*) presented by the Presi-

¹² Amendment of 13 November, 1874.

¹³ Amendment of 13 November, 1874.

¹⁴ Amendment of 13 November, 1874.

dent of the Republic, by the Legislatures of the States, or by deputations of the same, shall pass immediately to a committee. Those which the Deputies or Senators shall present, shall be subject to such action as may be prescribed by the rules of debate.¹⁵

Art. 67. Every bill (*proyecto de ley ó de decreto*) for a law or for a decree which shall be rejected by the Chamber of its origin before passing to the Revising Chamber, cannot be again presented during the sessions of the year.¹⁶

Art. 68. The second session shall be devoted, by preference, to the examination of and action upon the Budgets (*presupuestos*) for the following fiscal year; to the enactment of the appropriations (*contribuciones*) to cover them; and to the auditing (*revisión*) of the accounts of the past year, which the Executive presents.

Art. 69. The day before the last of the first session, the Executive shall present to the Chamber of Deputies the estimates (*proyecto de presupuestos*) for the next following year, and the accounts for the previous year. Both shall pass to a Committee of five Representatives, appointed on the same day, which shall have the obligation of examining both documents and presenting a report on them, at the second day of the second session (*en la segunda sesión del segundo período*).¹⁷

Art. 70. The framing of laws and decrees may begin indiscriminately in either of the two Chambers, with the ex-

¹⁵ Amendment of 13 November, 1874.

¹⁶ Amendment of 13 November, 1874. See in connection with this, clauses C, D and E of Art 71, as amended on the same date.

¹⁷ Amendment of 13 November, 1874. The law of 30 May, 1881, in regard to the system of fiscal accounting, prescribes the method of rendering the annual account of the national revenues, and the duties of the "Ways and Means" Committee in revising that account.

ception of Bills concerning loans (*los proyectos que versen sobre empréstitos*), taxes or duties, or the recruiting of troops, all of which must be first discussed in the Chamber of Deputies.¹⁸

Art. 71. Every project of law or of decree, the resolution of which does not belong exclusively to one of the Chambers, shall be discussed successively in both, observing the rules of debate in respect to the form, time (*intervalos*) and method of procedure in the discussions and casting of votes.¹⁹

A. Upon approval of a bill in the Chamber of its origin, it shall pass for discussion to the other Chamber. If the latter approves it, it shall be remitted to the Executive, who, if he has no observations to make, will publish it immediately.

B. Every bill shall be considered as approved by the Executive, if not returned with his objections (*observaciones*), to the Chamber where it originated, within ten business days (*días útiles*), provided, that within such term the Congress shall not have adjourned or suspended its sessions, in which event the bill shall be returned on the first business day on which it is in session.

C. The bill for a law or decree which has been rejected in whole or in part by the Executive, shall be returned with his objections to the Chamber of its origin. It shall be discussed anew by this Chamber, and if it should be confirmed by an absolute majority of votes, it shall pass again to the revisory Chamber. If it should be sanctioned by the latter by an absolute majority of votes, the bill becomes a law or decree, and shall return to the Executive for his promulgation. The voting upon a law or decree shall be by roll-call and recorded (*nominales*).

D. If any bill for a law or decree should be rejected

¹⁸ Amendment of 13 November, 1874.

¹⁹ The *Reglamento de Debates* governing both Chambers, is that passed 20 December, 1897, which went into effect 1 September, 1898.

in its entirety by the Chamber of Revision, it shall return to that of its origin with the observations which the former shall have made to it. If upon examination *de novo*, it should be approved by the absolute majority of the members present, it shall return to the Chamber which rejected it, which shall take it again into consideration, and if it should approve it by the same majority, it shall pass to the Executive for the purposes mentioned in fraction A.; but if disapproved, it cannot be again presented until the following sessions.

E. If a bill for a law or decree should be rejected only in part, or modified or amended by the revisory Chamber, the new discussion in the Chamber of its origin shall be confined solely to the parts rejected, or to the reforms or amendments, without altering in any manner the Articles approved. If the additions or amendments made by the revisory Chamber should be approved by the absolute majority of the votes present in the Chamber of its origin, the entire bill shall pass to the Executive for his action under fraction A. But if the additions or amendments made by the revisory Chamber should be rejected by the majority of votes in the Chamber of its origin, they shall return to the former in order that it may take into consideration the reasons of the latter, and if by an absolute majority of the votes present, said additions or amendments should be rejected upon this second revision, the bill, so far as it shall have been approved by both Chambers, shall pass to the Executive for his action under fraction A. But if the revisory Chamber should insist, by the absolute majority of the votes present, upon said additions or amendments, the entire bill cannot be again presented until the following sessions, unless both Chambers concur, by an absolute majority of their members present, that the law or decree shall be enacted with only the Articles approved, and that those added or amended shall be reserved for their examination and vote at the following sessions.

F. In the interpretation, amendment or repeal (*reforma*

ó *derogación*) of laws or decrees, the same procedure shall be observed as is established for their enactment.

G. Both Chambers shall convene (*residirán*) in the same place, and cannot remove to another, unless they shall previously agree upon such removal (*traslación*) and upon the time and manner of carrying it into effect, designating the same point for the convening of both Chambers. But if the two Chambers agree upon the removal, and differ in regard to the time, manner or place, the Executive shall end the difference, selecting one of the alternatives (*extremos*) in dispute. Neither Chamber shall suspend its sessions for more than three days, without the consent of the other.

H. When the General Congress shall convene in extraordinary sessions, it shall occupy itself exclusively with the object or objects designated in the proclamation convening it; and if it shall not have finished them by the day on which the ordinary sessions should begin, it shall nevertheless adjourn, leaving the pending matters to be treated in the latter.

The Executive of the Union cannot interpose objections (*hacer observaciones*) to the resolutions of Congress, when it prorogues its sessions, or exercises the functions of an electoral body or of a jury.²⁰

PARAGRAPH III.

OF THE POWERS OF THE GENERAL CONGRESS.

Art. 72. The Congress has the power:

I. To admit new States or Territories into the Federal Union, incorporating them into the Nation.

II. To erect the Territories into States, when they shall have a population of eighty thousand inhabitants, and the elements necessary to provide for their political existence.

²⁰ Art. 71 as amended by the law of 13 November, 1874.

III. To form new States within the limits of the existing ones, for which purpose it shall be necessary: 1. That the fraction or fractions seeking to be erected into a State shall have a population of at least one hundred and twenty thousand inhabitants; 2. That it be proven before the Congress that they possess the elements sufficient to provide for their political existence; 3. That the Legislatures of the States whose territory is involved be heard concerning the convenience or inconvenience of the formation of the new State, and they shall be obliged to render their report within six months, counted from the day that the respective communication was forwarded to them; 4. That the Executive of the Federation be likewise heard, who shall transmit his report within seven days, counted from the date on which he shall be requested for it; 5. That the erection of the new State be adopted by the vote of two-thirds of the Deputies and Senators present in their respective Chambers; 6. That the resolution of the Congress be ratified by the majority of the Legislatures of the States, with a copy of the record before them; provided, that the Legislatures of the States whose territory is involved shall have given their consent; 7. If the Legislatures of the States whose territory is involved shall not have given their consent, the ratification mentioned in the foregoing fraction, shall be given by two-thirds of the Legislatures of the other States.²¹

IV. To arrange definitely the boundaries of the States, settling the differences which may arise between them in regard to the demarcation of their respective territories, except when these differences may be of a contentious character.

V. To change the seat (*residencia*) of the Supreme Powers of the Federation.

VI. To legislate in respect to all matters concerning the Federal District and Territories.²²

²¹ Frac. III of Art. 72, as amended by the law of 13 November, 1874.

²² Amendment of 31 October, 1901.

VII. To approve the Budget of estimates (*presupuesto*) of the expenses of the Federation which the Executive shall present to it annually, and to impose the taxes necessary to provide for it.

VIII. To establish the conditions (*dar bases*) upon which the Executive can procure loans upon the credit of the Nation; to approve such loans, and to recognize and provide for the payment of the national debt.

IX. To enact customs-tariffs (*expedir aranceles*) upon foreign commerce, and to prohibit, by general regulations, the imposition of onerous restrictions upon the commerce between the States.²³

X. To enact code of mining and commerce, the latter including banking institutions, obligatory throughout the Republic.²⁴

XI. To create or abolish the public offices of the Federation; to fix, increase or diminish the salaries attached to them.

XII. To ratify the nominations made by the Executive of ministers, diplomatic agents and consuls, of the superior employés of the Treasury, of colonels and other superior officers of the army and national naval forces.²⁵

²³ The Ordenanza General de Aduanas marítimas y fronterizas, of 20 June, 1905, contains the present Tariff Law, which, however, has since undergone a number of amendments.

²⁴ Amendment of 14 December, 1883. In execution of this power, the Federal Government shortly afterwards promulgated Codes of Mining and of Commerce, unifying the law on these important subjects through the whole country. The Código de Minería now in force is the very new one of 29 November, 1909, which went into effect on 1 January, 1910; and the Código de Comercio of 15 September, 1889, which became operative on 1 January, 1890. They are reproduced herein in their respective places.

²⁵ But according to fraction B, clause II of this Art. 72, it is exclusively the faculty of the Senate to confirm these nominations. See also Arts. 74, frac. III and 85, fracs. III and IV. The organization of the Diplomatic corps is provided by the law of 3 June, 1896, with its reglamento of 19 June of the same year, and the amendment of the law made by the decree of 28 November, 1898.

XIII. To approve the treaties, agreements or diplomatic conventions which the Executive may celebrate.²⁶

XIV. To declare war, upon reports which may be made to it by the Executive.²⁷

XV. To regulate the manner in which letters of marque shall be issued; to enact laws according to which captures on land or sea shall be declared good or bad, and laws in regard to the maritime rights of peace and war.²⁸

XVI. To grant or deny the entrance of foreign troops into the territory of the Federation, and to consent to the stay of vessels of another Power, for more than one month, in the waters of the Republic.²⁹

XVII. To permit the departure of national troops out of the limits of the Republic.³⁰

XVIII. To raise and maintain the army and navy of the Union, and to prescribe regulations for its organization and service.³¹

XIX. To prescribe regulations for the purpose of organizing, arming and disciplining the national guard, reserving to the citizens who compose it, the appointment of their chiefs and officers, and to the States the power of instructing them, according to the discipline prescribed by said regulations.

XX. To give its consent in order that the Executive may

²⁶ This also is of the exclusive cognizance of the Senate according to clause I of frac. B. See also Art. 85, frac. X.

²⁷ See also Art. 85, frac. VIII.

²⁸ In regard to privateering, see Arts. 85, fracs. IX and 111, frac. II; and in regard to maritime rights, Art. 97, frac. II.

²⁹ These are also of the exclusive power of the Senate, according to frac. B, clause III, of this Art. 72, as Amended. In making the numerous amendments to Art. 72, by the law of 13 November, 1874, it seems that the express repeal of many of the clauses of Paragraph III was overlooked.

³⁰ See preceding note.

³¹ The National Army is organized upon the basis of the Law of 1 November, 1900, and the National War Marine upon that of 15 June of the same year.

dispose of the national guard outside of its respective States or Territories, and determine the necessary force (*fijando la fuerza necesaria*).³²

XXI. To enact laws in regard to citizenship, naturalization, colonization, emigration, immigration and the general health of the country.³³

XXII. To enact laws in regard to general ways of communication and in regard to posts and postoffices; to define, to determine what are the waters under federal jurisdiction, and to enact laws upon the use and utilization of the same.³⁴

XXIII. To establish mints, fix the conditions of coinage, determine the value of foreign money, and adopt a general system of weights and measures.³⁵

XXIV. To establish regulations for the occupation and sale of vacant lands (*terrenos baldíos*) and to fix their price.³⁶

XXV. To grant amnesties for crimes within the jurisdiction of the tribunals of the Federation.

XXVI. To grant rewards or recompenses for eminent services rendered to the country or to humanity.³⁷

³² See Arts. frac. B, clause IV of this Article as amended; also Arts. 74, frac. I, and 85, frac. VII.

³³ Amendment of 27 October, 1908. The present law in regard to citizenship and naturalization is the *Ley de Extranjería*, of 28 May, 1886, herein published. The Colonization Law is that of 15 December, 1883, and its Regulations of 17 July, 1889, published herein. Since the above amendment, there has been enacted a general law regulating emigration, immigration and general health, of 25 February, 1909, and the *Reglamento del Servicio é Inspección de Inmigrantes*, of the same date.

³⁴ Amendment of 20 June, 1908.

³⁵ See in regard to money, Arts. 28 and 111, frac. III, of this Constitution.

³⁶ The law of this important subject is that of 26 March, 1894, and Amendments, and its Reglamento of 5 June of same year, published herein.

³⁷ Amendment of 2 June, 1882. Pursuant to this Section, the subject of Pensions, Rewards, and other recompenses for services rendered to the Country is covered by the law of 29 May, 1896, and its Reglamento of 30 June of the same year; and the decree of 4 June, 1898, amending certain Sections of the original law.

XXVII. To prorogue for thirty business days (*días útiles*) the first period of its ordinary sessions.³⁸

XXVIII. To prescribe rules for its own government (*su reglamento interior*), and to adopt necessary means to enforce the attendance of absent Deputies, and to correct the faults and omissions of those present.³⁹

XXIX. To freely appoint and remove the employés of its clerical department, and those of the accounting department, which shall be organized as provided by law.

XXX. To enact all the laws which may be necessary and proper in order to carry out (*hacer efectivas*) the foregoing powers and all others granted by this Constitution to the Powers of the Union.⁴⁰

Art. 72A. The exclusive powers of the Chamber of Deputies are:

I. To constitute itself into an Electoral College in order to exercise the powers prescribed by law in respect to the election of President and Vice President of the Republic, Magistrates of the Supreme Court of Justice, and Senators for the Federal District.⁴¹

II. To consider (*calificar*) and decide upon the resignations of the President and Vice President of the Republic, and upon the resignations of the Magistrates of the Supreme Court of Justice.⁴²

III. To oversee by means of an investigating committee

³⁸ According to Art. 62, as amended 13 November, 1874, the second period of sessions is also prorogable for 15 *días útiles*.

³⁹ See Art. 61 as amended, in respect to the powers of both Chambers to compel the attendance of absent members. The Rules of the Congress now in force were enacted 20 December, 1897.

⁴⁰ Fractions XXXI and XXXII were added to Art. 72 by the Amendment of 24 April, 1896, and were repealed by law of 6 May, 1904.

⁴¹ Amendment of 6 May, 1904, which for the first time created the office of Vice President under the present Constitution. The Law of 24 May, 1904, treats of the functions of the Chamber as an electoral body.

⁴² Amendment of 6 May, 1904.

of its own number, the faithful discharge of the functions of the Auditor General's office (*Contaduría General*).

IV. To appoint the superior officers and other employés of the same.

V. To constitute itself a jury of impeachment (*jurado de acusación*) for the higher functionaries mentioned in Art. 103 of this Constitution.⁴³

VI. To examine the account which the Executive shall present annually, approve the annual estimates of expenses, and to initiate the taxes (*contribuciones*) which in its judgment should be levied to cover them.

Art. 72B. The exclusive powers of the Senate are:

I. To approve the treaties and diplomatic conventions which the Executive may conclude with foreign powers.

II. To ratify the appointments which the President of the Republic may make of ministers, diplomatic agents, consuls general, superior employés of the Treasury, colonels and other superior chiefs of the army and national fleet, in the terms provided by law.

III. To authorize the Executive to permit the departure of national troops out of the limits of the Republic, the passage of foreign troops through the national territory, and the stay of vessels of another power, for more than one month, in the waters of the Republic.

IV. To give its consent for the Executive to dispose of the national guard outside of its respective States and Territories, determining the necessary force.

V. To declare, when the constitutional Executive and Legislative Powers of a State shall have disappeared, that the case has arisen for appointing a Provisional Governor for it, who shall call elections according to the constitutional laws of such State. The appointment of the Governor shall be made by the Federal Executive, with the approbation of the

⁴³ Arts. 26 to 36 of the law of 6 June, 1896, treat of the proceedings of this *Jurado de Acusación*.

Senate, or during its recesses, with that of the Permanent Commission. Said official shall not be elected constitutional Governor in the elections which may be held by virtue of the call which he shall issue.

VI. To settle the political questions which may arise between the Powers of a State, whenever any of them shall apply to the Senate for that purpose, or when by reason of such questions, the constitutional order shall be interrupted through a conflict of arms. In such case, the Senate shall declare its judgment, in accord with the General Constitution of the Republic and with that of the State. The law shall regulate the exercise of this and the foregoing powers.

VII. To constitute itself a Jury of Judgment (*erigirse en jurado de sentencia*) in accordance with Art. 105 of the Constitution.⁴⁴

Art. 72C. Each one of the Chambers may, without the intervention of the other:

I. Dictate economic resolutions relative to its interior regimen.

II. Communicate between themselves and with the Executive, through committees of its own body.

III. Appoint the employés of its clerical force and provide for the internal regulation of the same.

IV. To issue proclamation (*convocatoria*) for extraordinary elections in order to fill vacancies in its membership.⁴⁵

PARAGRAPH IV.

OF THE PERMANENT DEPUTATION.⁴⁶

Art. 73. During the recesses of the Congress of the Union,

⁴⁴ Arts. 37 to 43 of the Law of 6 June, 1896, fix the procedure in such cases.

⁴⁵ Amendments of 13 November, 1874.

⁴⁶ The functions of the Permanent Committee are prescribed by Arts.

there shall be a Permanent Committee, composed of twenty-nine members, of whom fifteen shall be Deputies and fourteen Senators, named by their respective Chambers on the eve of the close of the sessions.⁴⁷

Art. 74. The attributes of the Permanent Deputation, besides others conferred in this Constitution, are the following:

I. To give its consent for the use of the national guard, in the cases mentioned in Art. 72, frac. XX.

II. To issue of its own motion, or on that of the Executive, he being heard in the first instance, the proclamation for the Congress, or only one Chamber of it, to convene in extraordinary session; in both cases the vote of two-thirds of the individuals present being necessary. The proclamation shall state the object or objects of the extraordinary session.⁴⁸

III. To approve the appointments referred to in Art. 85, frac. III.

IV. To receive the oath of the President of the Republic, and of the members of the Supreme Court of Justice, in the cases provided by this Constitution.⁴⁹

V. To report upon all unfinished business on the calendars, so that the following Legislature may immediately have material upon which to work.

SECTION II.

OF THE EXECUTIVE POWER.

Art. 75. The exercise of the Supreme Executive Power 166 to 177 of the Reglamento del Congreso General, under date of 20 December, 1897.

⁴⁷ Amendment of 13 November, 1874. Previously the Permanent Deputation was composed all of Deputies, one from each State and Territory.

⁴⁸ Amendment of 13 November, 1874.

⁴⁹ It is interesting to note that the religious oath was entirely abol-

of the Union is vested in a single individual who shall be called "President of the Mexican United States."

Art. 76. The election of President shall be indirect in the first degree and by secret ballot (*escrutinio secreto*), in the terms prescribed by the electoral laws.⁵⁰

Art. 77. In order to be President it is required to be: a Mexican citizen by birth, in the exercise of his rights, of thirty-five years of age completed at the time of the election, to belong to no ecclesiastic order (*estado*), and to reside in the country at the time of the election.

Art. 78. The President and the Vice President of the Republic shall enter upon the exercise of their functions on the 1st of December, and shall continue in their office six years.⁵¹

Art. 79. The electors who choose the President of the Republic, shall also on the same day and in the same manner, elect as Vice President a citizen having the same qualifications (*en quién concurren las condiciones*) as required for President by Art. 77.

The Vice President of the Republic shall be President *ex officio* (*nato*) of the Senate, with the right of debate (*con voz*) but without a vote, except in cases of a tie (*en* ished in all matters, by the Reform Laws of 25 September and 4 October, 1873; the first providing that "the simple promise to speak the truth and to fulfill the obligations contracted, shall take the place of the religious oath, with its effects and penalties." The later law prescribes the forms of affirmation (*protesta*) to be taken by the President and other principal officials. The effective words are: "*Yo protesto.*" This affirmation is called "*la protesta de ley.*" Falsely taken, it is perjury. See Art. 130, frac. IV.

⁵⁰ The election of President and Vice President is regulated by Arts. 46 and 47 of the electoral law of 18 December, 1901, amended 24 May, 1904.

⁵¹ Amendment of 6 May, 1904.

caso de empate). The Vice President may, however, hold any other office (*desempeñar algún encargo*) within the appointment of the Executive, and in such event, as well as when he is otherwise in default (*lo mismo que en sus otras faltas*) shall be substituted in the presidency of the Senate in the manner which may be prescribed by law.⁵²

Art. 80. When the President of the Republic shall not be present on the day designated by law to take possession of his office, when he shall be in absolute default, or when leave is granted him to withdraw from his functions, the Vice President of the Republic shall assume the exercise of the Executive Power, by virtue of law (*por ministerio de la ley*) without the necessity of a new protest.

If the default of the President shall be absolute, the Vice President shall substitute him until the end of the term for which he was elected, and in the other cases until the President shall present himself to discharge his functions.⁵³

Art. 81. If at the beginning of a constitutional term, neither the President nor Vice President elect shall present himself, or if the election should not be held and declared on the 1st of December, the President whose term has expired shall nevertheless cease to act, and the Secretary of State for Foreign Relations shall at once assume the Executive Power in the character of President *ad interim*, and if there should be no such Secretary, or if he should be prevented from doing so, one of the other Secretaries, following the order of the law which establishes their number.

The same procedure shall be observed where, in case of the absolute or temporary default of the President, the Vice President does not present himself; when leave shall be granted him to withdraw from his functions, if he be discharging

⁵² Amendment of 6 May, 1904.

⁵³ Amendment of 6 May, 1904.

them, and if in the course of a term, an absolute default of both functionaries should occur.

In the event of the absolute default of the President and of the Vice President, the Congress of the Union, or during its recesses, the Permanent Committee, shall at once issue a call for extraordinary elections.

When the default of one and the other functionary shall occur in the last year of a term, such call shall not be made, but the Secretary who is exercising the Executive Power shall continue in its exercise until possession is taken by the new President, or by the person who substitutes him in accordance with the foregoing precepts.

The citizens chosen in the extraordinary elections shall take possession of their offices immediately upon the announcement of the result, and shall exercise them for the time which remains until the expiration of the constitutional period.

When one of the Secretaries of State shall assume the Executive Power, he shall exercise it without the necessity of protest, until he makes it (*entretanto la otorga*).⁵⁴

Art. 82. The offices of President and Vice President of the Republic can only be resigned for grave cause, which shall be passed upon by the Chamber of Deputies, before which the resignation shall be presented.⁵⁵

Art. 83. The President, upon taking possession of his office, shall make before the Congress, or in its recesses before the Permanent Committee, the following affirmation (*protesta*): “I affirm (*protesto*) without any reservation that I will keep and cause to be kept (*guardar y hacer guardar*) the Political Constitution of the Mexican United States, together with its additions and amendments, the Laws

⁵⁴ Amendment of 6 May, 1904.

⁵⁵ Amendment of 6 May, 1904.

of the Reform, and all others which shall be enacted in pursuance thereof (*que de aquella emanen*), and that I will discharge loyally and patriotically the office of President of the Republic which the people has conferred on me, in all things looking to the welfare and prosperity of the Union."

The Vice President shall make the affirmation at the same session, in like terms, to discharge the Vice Presidency, and if the event occurs, the Presidency of the Republic; but if he should be prevented from making the affirmation at that session, he shall make it at another.⁵⁶

Art. 84. The President and the Vice President of the Republic cannot absent themselves from the national territory without the permission of the Chamber of Deputies.⁵⁷

Art. 85. The powers and obligations of the President are as follows:

I. To promulgate and execute the laws enacted by the Congress of the Union, attending in the administrative sphere to their exact observance.

II. To appoint and remove freely the Secretaries of the several Departments (*del despacho*); to remove the diplomatic agents and the superior employés of the Treasury; to appoint and remove freely the other employés of the Union, the appointment and removal of whom are not otherwise provided for by the Constitution or laws.

III. To appoint the ministers, diplomatic agents and consuls-general, with the approbation of the Congress, or in its recesses of the Permanent Deputation.

IV. To appoint, with the approbation of the Congress, the colonels and other superior officers of the army and the navy, and the superior employés of the Treasury.

V. To appoint the other officers of the army and navy, as provided by law.

⁵⁶ Amendment of 6 May, 1904.

⁵⁷ Amendment of 6 May, 1904.

VI. To dispose of the permanent armed forces of sea and land for the interior security and the exterior defense of the Federation.

VII. To dispose of the national guard for the same objects, in the terms prescribed by fraction 20 of Art. 72.

VIII. To declare war in the name of the Mexican United States, upon the passage by the Congress of the Union of a law authorizing it.

IX. To grant letters of marque (*patentes de corso*), subject to the regulations prescribed by the Congress.

X. To direct diplomatic negotiations and to celebrate treaties with foreign Powers, submitting them to the ratification of the Federal Congress.

XI. To receive ministers and other envoys of the foreign Powers.

XII. To convene the Congress in extraordinary sessions, when approved by the Permanent Deputation.

XIII. To provide the Judicial Power such assistance as may be necessary for the expeditious exercise of its functions.

XIV. To declare open all classes of ports, establish maritime and frontier custom houses, and designate their location.

XV. To grant, in conformity to the laws, pardons to those convicted of crimes within the jurisdiction of the Federal Tribunals.

XVI. To grant exclusive privileges for a limited time and in accordance with the laws, to discoverers, inventors or to the improvers of any branch of industry.⁵⁸

Art. 86. For the dispatch of the administrative affairs of the Federation, there shall be such a number of Secretaries as the Congress may establish by a law, which shall

⁵⁸ Amendment of 2 June, 1882. The New Patent Law, of 25 August, 1903, the Law of Trade-marks, and the Copyright Law, are published herein.

make a distribution of the business which shall belong to each Department (*estar á cargo de cada Secretaría*).⁵⁹

Art. 87. In order to be a Secretary of Department (*del despacho*) it is required: to be a Mexican citizen by birth, to be in the exercise of his rights, and to have attained twenty-five years.

Art. 88. All the Regulations (*reglamentos*), Decrees and Orders of the President shall be signed by the Secretary of the Department charged with the branch of business to which the matter belongs. Without this requisite they shall not be obeyed.

Art. 89. The Secretaries of the Departments (*del despacho*) shall give account to the Congress, as soon as its sessions of the first period open, of the state of their respective Departments.

SECTION III.

OF THE JUDICIAL POWER.

Art. 90. The Judicial Power of the Federation is vested in one Supreme Court of Justice, and in the District and Circuit Tribunals.

Art. 91. The Supreme Court of Justice shall be composed of fifteen members, who shall sit *en Banc* or in Divisions (*funcionará en Tribunal pleno ó en Salas*), in the manner prescribed by law.⁶⁰

⁵⁹ The Laws of 13 May, 1891, and 16 May, 1905, made new distributions of the business of several Departments; these Laws are published, *post*, Arts. 131-140.

⁶⁰ Amendment of 22 May, 1900.

Art. 92. The members of the Supreme Court of Justice shall hold office for six years, and their election shall be indirect in the first degree, in the terms prescribed by the electoral law.

Art. 93. In order to be elected a member of the Supreme Court of Justice it is necessary: to be learned in the science of law, in the judgment of the electors; to be thirty-five years of age, and a Mexican citizen by birth, in the exercise of his rights.

Art. 94. The members of the Supreme Court of Justice, upon entering into the exercise of their trust, shall take an *oath* before the Congress, or in its recess before the Permanent Deputation, in the following form: "Do you *swear* to loyally and patriotically discharge the office of Magistrate of the Supreme Court of Justice which the people has conferred upon you, in accordance with the Constitution, and looking in all things to the welfare and prosperity of the Union?"

Art. 95. The office of member of the Supreme Court of Justice can only be resigned for grave cause, approved by the Congress, before which the resignation shall be presented. In its recesses, the acceptance shall be by the Permanent Deputation.

Art. 96. The law shall establish and organize the Circuit Tribunals, the District Courts (*Juzgados*), and the *Ministerio Público* of the Federation. The officials of the *Ministerio Público* and the Attorney General (*Procurador General*) of the Republic, who shall be its principal officer, shall be appointed by the President.⁶¹

⁶¹ Amendment of 22 May, 1900.

Art. 97. To the Tribunals of the Federation belongs the cognizance:

I. Of all controversies which may arise in regard to the compliance with and application of the Federal laws, except in the case that such application only affects the interests of private persons, in which event the local judges and tribunals of the common order of the States, of the Federal District and of the Territory of Lower California, shall be competent to hear and decide them.⁶²

II. Of those controversies which pertain to maritime rights. III. Of those to which the Federation is a party. IV. To those which arise between two or more States. V. To those which arise between a State and one or more citizens of another. VI. Of those civil or criminal cases which may arise in consequence of treaties celebrated with foreign Powers. VII. Of the cases concerning diplomatic agents and consuls.

Art. 98. To the Supreme Court of Justice belongs the original jurisdiction (*desde la primera instancia*), of controversies which shall arise between one State and another, and of those in which the Union is a party.

Art. 99. To the Supreme Court of Justice also belongs the jurisdiction to determine conflicts (*competencias*) which may arise between the Tribunals of the Federation; between the latter and those of the States, and between those of one State and those of another.

Art. 100. In the other cases comprised in Art. 97, the Supreme Court of Justice shall be a court of appeal, or of last instance, according to the gradation which the law may make of the jurisdiction (*atribuciones*) of the Circuit and District Tribunals.

⁶² Amendment of 29 May, 1884.

Art. 101. The Tribunals of the Federation shall determine all controversies which may arise:

I. On account of laws or acts of any authority which violate individual guaranties.

II. On account of laws or acts of the Federal authority which may invade or restrict the sovereignty of the States.

III. On account of laws or acts of the State authorities, which may invade the sphere of Federal authority.

Art. 102. All the suits at law (*juicios*) mentioned in the preceding Article, shall be prosecuted (*se seguirán*) upon the petition of the party aggrieved, by means of judicial proceedings and forms which shall be prescribed by law. The judgment shall always be such, that it shall effect only particular individuals, and be limited to protecting them and affording them *amparo* in the special case in which the process is sought, without making any general declaration in respect to the law or act involved (*que la motivare*).

When the controversy arises from the violation of individual guaranties in civil judicial matters, recourse can only be had to the Tribunals of the Federation after the rendition of judgment putting end to the litigation, and against which the law concedes no recourse, the effect of which may be its revocation.⁶³

TITLE IV.

OF THE RESPONSIBILITY OF PUBLIC OFFICIALS.

Art. 103. The Senators and Deputies to the Congress of the Union, the Magistrates of the Supreme Court of Jus-

⁶³ Last Clause is Amendment of 27 October, 1908. Arts. 101 and 102 establish the "Writ of Amparo," which serves the functions of *habeas corpus* and other important uses, as described in Arts. 817, *et seq.*

tice, and the Secretaries of the Departments, are responsible for the common crimes which they may commit during their terms of office, and for the crimes, defaults and omissions of which they may be guilty in the exercise of their offices. The Governors of the States are responsible for the infraction of the Constitution and Federal Laws. The President and Vice President of the Republic, during the term of their office, can only be accused of treason to the country, express violation of the Constitution, attack on the freedom of elections (*ataque á la libertad electoral*), and grave crimes of the common order.¹

The high officials of the Federation do not enjoy any constitutional privilege (*fuero*) on account of official crimes, defaults or omissions of which they are guilty in the discharge of any public employment, office or commission which they accepted during the time such privilege is enjoyed according to law. The same is true in respect to common crimes which they may commit during the discharge of said employment, office or commission. In order that the cause may be begun when the high official returns to exercise his functions, the procedure prescribed in Art. 104 of the Constitution must be followed.²

Art. 104. If the crime be a common one, the Chamber of Representatives, resolved into a grand jury, shall declare, by an absolute majority of votes, whether or not there be cause to proceed against the accused. If decided in the negative there shall be no further proceeding. If in the affirmative, the accused is *ipso facto* removed from his office and subject to the action of the ordinary tribunals.³

Art. 105. Official crimes shall be cognizable: by the Chamber of Deputies as a Jury of Accusation, and by that of the

¹ Amendments of 13 November, 1874 and 6 May, 1904.

² Amendment of 13 November, 1874.

³ Amendment of 13 November, 1874.

Senators as a Jury of Sentence. The Jury of Accusation shall have for its object, to declare, by an absolute majority of votes, whether the accused is or is not guilty. If the declaration is favorable (*fuere absolutoria*), the official shall continue in the exercise of his office. If it be condemnatory, he shall be immediately removed from said office and shall be placed at the disposition of the Chamber of Senators; which, resolved into a Jury of Sentence, and after hearing the defendant and the accuser, if there be one, shall proceed to apply, by an absolute majority of votes, the penalty which the law designates.⁴

Art. 106. After a sentence of responsibility for official crimes has been pronounced, the grace of pardon (*gracia de indulto*) cannot be granted to the defendant.

Art. 107. Responsibility for official crimes and defaults can only be exacted (*solo podrá exigirse*) during the term in which the official exercises his office and for one year afterwards.

Art. 108. In civil suits (*demandas del órden civil*) there is no privilege (*fuero*) or immunity for any public functionary.

TITLE V.

OF THE STATES OF THE FEDERATION.

Art. 109. The States shall adopt for their interior regimen the popular, representative, republican form of government, and they may provide in their respective Constitutions for the reelection of the governors, in accordance with the provisions of Art. 78 in regard to the President of the Republic.¹

⁴ Amendment of 13 November, 1874.

¹ Amendment of 21 October, 1887.

Art. 110. The States may arrange between themselves, by amicable agreements, their respective boundaries; but such agreements cannot be given effect without the approbation of the Congress of the Union.

Art. 111. The States cannot in any case:

I. Celebrate any alliance, treaty or coalition with another State, or with foreign Powers. Coalitions which the frontier States may form for offensive and defensive war against the barbarians, are excepted.

II. Issue letters of marque or reprisal.

III. Coin money, issue paper money, stamps or sealed paper.

IV. Tax (*gravar*) the passage of persons or things which pass through their territory.²

V. Prohibit or tax, directly or indirectly, the entry into their territory, nor the leaving it, of any national or foreign merchandise.

VI. Tax the circulation or the consumption of national or foreign goods, with imposts or duties, the exaction of which is effected through local customs houses, or requires the inspection or examination of packages, or requires any documents to accompany the merchandise.

VII. Enact or enforce laws or fiscal dispositions which produce differences of taxation (*impuestos*) or requirements, on account of the origin of national or foreign merchandise, whether such difference is established because of (*respecto de*) the similar production of the locality, or between like productions of different origin (*procedencia*).

VIII. Issue evidences (*títulos*) of public debt payable in foreign money or outside of the national territory; contract, directly or indirectly, loans with foreign Governments; or contract obligations in favor of corporations or individuals of

² This Amendment, of 1 May, 1906, was the final step in the abolition of the interstate customs-tax called *alcabala*, which was a very serious restriction of internal commerce and a grievous abuse.

foreign nationality, when it is necessary to issue for such purpose documents payable to the bearer or transferable by endorsement.³

Art. 112. Nor can they, without the consent of the Congress of the Union :

I. Establish tonnage or any other port duties ; nor impose taxes or duties upon importations or exportations.

II. Keep at any time permanent troops or ships of war.

III. Make war on their own account (*por sí*) against any foreign Power, except in cases of invasion or of such imminent danger as not to admit delay. In such cases they shall give account immediately to the President of the Republic.

Art. 113. Each State has the obligation to deliver without delay criminals from other States to the Authority which demands them.⁴

Art. 114. The Governors of the States are obliged to publish and enforce compliance with the Federal laws.

Art. 115. In each State of the Federation full faith and credit shall be given to the public acts, registers and judicial proceedings of all the others. The Congress may, by general laws, prescribe the manner of proving such acts, registers and proceedings and their effect.⁵

Art. 116. The Powers of the Union are under the duty to protect the States against all invasion or exterior violence. In the event of insurrection or interior disorder, they shall give them like protection, whenever they are requested to do so by the Legislature of the State, or if it is not in session, by its Executive.

³ Amendments of 1 May, 1896.

⁴ The Law of 12 September, 1902 governs the interstate extradition of criminals.

⁵ See Articles 779-780; 942.

TITLE VI.

GENERAL DISPOSITIONS.

Art. 117. The powers which are not expressly granted by this Constitution to the Federal officials, are understood to be reserved to the States.

Art. 118. No person can at the same time hold two offices of popular election under the Union; but if elected he may choose between the two which one he wishes to exercise.

Art. 119. No payment of money shall be made, which is not embraced in the Budget (*presupuesto*) or determined by a subsequent law.

Art. 120. The President of the Republic, the members of the Supreme Court of Justice, the Deputies and other public officials of the Federation, of popular election, shall receive a compensation for their services, which shall be determined by law and paid by the Federal Treasury. This compensation cannot be renounced; and any law which may increase or diminish it, shall not have effect during the term for which an official holds his office.

Art. 121. Every public official, without any exception, before taking possession of his office, shall take an oath to observe this Constitution and the laws made in pursuance herewith.¹

Art. 122. In time of peace no military authority shall exercise any other functions than those strictly connected with military discipline. There shall only be fixed and per-

¹ See former note to Art. 74, frac. 4, in regard to abolition of oath and substitution of the *protesta de ley*.

manent military authority (*comandancias*) in the castles, fortresses and arsenals belonging immediately to the Federal Government; or in the encampments, barracks or depots which may be established outside of towns for the station of troops.

Art. 123. It belongs exclusively to the Federal Powers to exercise in matters of religious worship and external discipline, the intervention which the laws may prescribe.²

Art. 124. It is the exclusive right (*facultad privativa*) of the Federation, to tax the merchandise which is imported or exported, or which passes in transit through the national territory, as well as to regulate at all times and even to prohibit, for reasons of safety or police, the circulation in the interior of the Republic of every class of effects, whatever may be the place from which they come (*su procedencia*); provided, that the Federation itself cannot establish or enact (*dictar*) in the District and Federal Territories, the taxes and laws mentioned in fractions VI and VII of Art. 111.³

Art. 125. The forts, barracks, warehouses and other real properties destined by the Government of the Union to the public service and common use, shall be subject to the jurisdiction of the Federal Powers in the terms established by the law which the Congress of the Union will issue; but in order that those hereafter acquired within the territory of any State may be likewise under Federal jurisdiction, the consent of the Legislature of such State shall be necessary.⁴

Art. 126. This Constitution, the laws of the Congress of the Union which shall be enacted in pursuance thereof, and

² The Law of 14 December, 1874, treats of the exercise of religious worship, and makes effective the separation of Church and State.

³ Amendment of 1 May, 1896.

⁴ Amendment of 31 October, 1901.

all treaties made or which shall be made by the President of the Republic, with the approbation of the Congress, shall be the supreme law of all the Union. The judges of each State shall conform to said Constitution, laws and treaties, notwithstanding any provisions to the contrary which may be in the constitutions or laws of the States.

TITLE VII.

OF THE AMENDMENT (*REFORMA*) OF THE CONSTITUTION.

Art. 127. The present Constitution may be added to or amended. In order that the additions and amendments may become part of the Constitution, it is necessary that the Congress of the Union, by the vote of the two-thirds part of its members present, shall enact the amendments or additions, and that they shall be approved by the majority of the Legislatures of the States. The Congress of the Union shall make the count of the votes of the Legislatures and the declaration that the additions or amendments have been approved.

TITLE VIII.

OF THE INVIOABILITY OF THE CONSTITUTION.

Art. 128. This Constitution shall not lose its force and vigor, even when on account of some rebellion its observance be interrupted. In the event that by some public upheaval a government should be established contrary to the principles which it sanctions, its observance shall be reestablished so soon as the people recover their liberty; and in accordance with it and the laws which shall have been enacted by its author-

ity, all those who have taken part in the government arising out of the rebellion, as well as those who have coöperated with it, shall be adjudged.

TRANSITORY ARTICLE.

Art. 129. This Constitution shall be published immediately and shall be sworn to with the greatest solemnity in all the Republic; but, with the exception of the provisions relative to the election of the Supreme Federal Powers and those of the States, it shall not commence to be effective (*regir*) until the 16th day of September next coming, when the first constitutional Congress shall be installed. After that time, the President of the Republic and the Supreme Court of Justice, who are to continue in the exercise of their functions until the persons constitutionally elected take possession, shall conform in the discharge of their obligations and powers to the precepts of the Constitution.

GIVEN in the Hall of Sessions of the Congress in Mexico, the fifth of February, one thousand eight hundred and fifty-seven, the thirty-seventh of Independence.

Valentín Gómez Farías, Deputy for the State of Jalisco, President; León Gúzman, Deputy for the State of Mexico, Vice President.

Wherefore, I order that it be printed, published, circulated, and be given due compliance, in the terms which it prescribes.

Palace of the National Government at Mexico, February 12, 1857.

IGNACIO COMONFORT.

To the Citizen Ignacio de la Llave, Secretary of State and of the Despatch of Gobernation.

And I communicate it to you for its publication and compliance.

God and Liberty. México, 12 February, 1857.

Llave.

ADDITIONAL ARTICLES.

Art. 130. By the decree of 25 September, 1873, important amendments were made to the Constitution. The amendments were five in number, of which three have since been incorporated into other Articles of the Constitution, as indicated below. The remaining Articles are as follows:

Art. 1. The State and Church are independent of each other. The Congress shall not enact laws establishing or prohibiting any religion.

Art. 2. Marriage is a civil contract. It and all other acts of the civil status of persons, are of the exclusive cognizance of the officials and authorities of the civil order (*del orden civil*), in the terms prescribed by the laws, and shall have the force and effect which the laws give them.

Art. 3. (This is now, by the Law of 14 May, 1901, part of Art. 27, prohibiting religious institutions from acquiring real property.)

Art. 4. The simple promise to speak the truth and to comply with the obligations which are contracted, shall take the place of the religious oath, with its effects and penalties. (See Art. 121.)

Art. 5. (This is now embraced in Art. 5, as reformed by the Law of 10 June, 1898.)

Given in the National Palace of México, the 25th of September, 1873.

SEBASTIÁN LERDO DE TEJADA, President.

TITLE II.

SECRETARÍAS, OR DEPARTMENTS OF STATE,
AND THEIR FUNCTIONS.

(Law of 13 May, 1891, amended 16 May, 1905.)

- Art. 131. Departments of Government.
- 132. Department of Foreign Relations.
 - 133. Department of The Interior.
 - 134. Department of Justice.
 - 135. Department of Public Instruction.
 - 136. Department of Fomento, Colonization and Industry.
 - 137. Department of Communications and Public Works.
 - 138. Department of Finance, Public Credit and Commerce.
 - 139. Department of War and Navy.
 - 140. Special Reference.

Art. 131. In view of the great variety of affairs to be treated directly with the Federal Government in its different Departments, it is important to notice the organization of these governmental agencies, and the distribution of the public business and administrative duties to them respectively. The Federal Constitution (Arts. 86-89) authorizes the creation of such number of "Departments of State for the Dispatch of the Administrative Affairs of the Federation," as the Congress may establish by law, distributing to each Department the business which shall be under its charge. As at present organized, by the Law of 13 May, 1891 (as amended by the Law of 16 May, 1905), there are eight *Secretarías*, or Departments, of State. They are respectively designated: *Secretaría de Relaciones Exteriores*, or Department of Foreign Relations; *Secretaría de Gobernación*, or Department of the Interior; *Secretaría de Justicia*, or Department of Justice; *Secretaría de Instrucción Pública y Bellas Artes*, or Department of Public Instruction and Fine Arts; *Secretaría de Fomento, Colonización é Industria*, or Department of Promotion, as it might be called; *Secretaría de Comunicaciones*

y Obras Públicas, or Department of Communications and Public Works; *Secretaría de Hacienda, Crédito Público y Comercio*, or Department of Finance, Public Credit and Commerce; and *Secretaría de Guerra y Marina*, or Department of War and Navy.

The business of these several Departments is distributed as follows:

DEPARTMENT OF FOREIGN RELATIONS.

Art. 132. To the *Secretaría de Relaciones Exteriores* belong: Relations with foreign nations; International Treaties, the preserving of such treaties, and of the Originals of all diplomatic documents, and of all Maps fixing the boundaries of the Republic; Legations and Consulates; Naturalization and Statistics of Foreigners, and the rights of foreigners residing in the Republic; Extraditions; Legalization of the signatures to documents which are to have effect outside the Republic, and to foreign documents which are to be effective in the Republic; the Nomination and resignation of the Secretaries of the Several Departments; Great Seal of the Nation; General Archives; Ceremonials.

DEPARTMENT OF THE INTERIOR.

Art. 133. To the *Secretaría de Gobernación* belong: Administrative measures for the observance of the Constitution; Constitutional amendments; General Elections; Relations with the Congress of the Union; The Rights of Man and of the Citizen; Freedom of Worship, and the police regulations of the same; the Rural Police of the Federation; Public Health; Amnesties; Territorial Division and the Boundaries of the States; Relations with the States; National Guard of the District and Territories; Government of the Federal District and Territories in all political and administrative matters, such as local elections, urban police, Civil Register, Public Charities, hospitals, poor houses

(*hospicios*); schools for the blind and deaf-mutes; founding hospitals and asylums; *Montes de Piedad*, savings banks, pawn-shops, lotteries, penitentiaries, prisons, work-houses (*presidios*), and houses of correction, theaters and public amusements; National Festivities; *Diario Oficial* (official newspaper) and Government Printery.

DEPARTMENT OF JUSTICE.

Art. 134. To the *Secretaría de Justicia* belong: Relations with the Supreme Court; The Circuit and District Courts; Condemnation for public uses under Eminent Domain; Pardons and commutations of sentence for crimes of a federal character, and for ordinary crimes in the District and Territories; Relations with the tribunals and courts of the Federal District and Territories; the *Ministerio Público*, or Public Attorney's office; Notaries and Legal business agents; Criminal statistics.²

DEPARTMENT OF PUBLIC INSTRUCTION AND FINE ARTS.

Art. 135. To the *Secretaría de Instrucción Pública y Bellas Artes* belong: Primary, Normal, Preparatory and Professional Instruction in the District and in the Federal Territories; Schools of Fine Arts, of Music, and Elocution, of Arts and Trades, of Agriculture, of Commerce and Administration, and other establishments of Public Instruction which may in the future be created in the District and in the Federal Territories; Academies and Scientific Societies; The National Pathological Institute, and other national institutions of an educative character; Literary, Dramatic and Artistic Property (copyright); Libraries, Museums and National Antiquities; Archæological and Historical Monuments; The management of Theaters dependent upon the Government, and the Encouragement of cultured plays;

² Amended by Law of 16 May, 1905.

The encouragement of Arts and Sciences; Expositions of works of Art; Scientific or Artistic congresses.³

DEPARTMENT OF FOMENTO, COLONIZATION AND INDUSTRY.

Art. 136. *Secretaría de Fomento* has no exact equivalent of meaning for its name in English; its activities are directed to the fomentation, or promotion, or development, of the national domain and industries, and it fills a very important mission in this field of usefulness; to it peculiarly belong: Agriculture; Public Lands (*terrenos baldíos*); Colonization; Mining; Mercantile and industrial property; exclusive privileges; Weights and Measures; Geographical, meteorological, and astronomical operations; Observatories; Cartography, scientific voyages and explorations; Agricultural, mining, industrial and manufacturing Expositions; General Statistics.

DEPARTMENT OF COMMUNICATIONS AND PUBLIC WORKS.

Art. 137. To the *Secretaría de Comunicaciones y Obras Públicas* belong: Interior posts and mails; Maritime ways of communication or steamship posts and mails; Universal Postal Union; Telegraphs and Telephones; Railroads; Works at the Ports; Lighthouses; Public monuments and works of utility and ornament; Roads, highways, ports, rivers, lakes and canals; Custody and works of the National Palace and the Palace of Chapultepec; Drainage of the Valley of Mexico.

DEPARTMENT OF FINANCE, PUBLIC CREDIT AND COMMERCE.

Art. 138. To the *Secretaría de Hacienda, Crédito Público y Comercio* belong: Federal Taxation; Maritime and frontier customs-tariffs; Administration of all the federal revenue; Fiscal police; Commerce; Exchanges and brokers;

³ Amendment of 16 May, 1905.

National and nationalized Property; Mints and assays; Loans and the public debt; Banks and other Institutions of Credit; Administration of the revenue of the Federal District and Territories; Land tax (*Catastro*) and fiscal statistics; the Budget.

DEPARTMENT OF WAR AND NAVY.

Art. 139. To the *Secretaría de Guerra y Marina* belong: The standing Army; the war and merchant marine; National Guard in the service of the Federation; Military legislation; Administration of military Justice; Military Pardons; Letters of marque; Military College; Naval schools; military hospitals; Forts, fortifications, barracks, factories of arms and munitions, arsenals, dikes, military stores and deposits of the Federation; Barbarous Indians and military Colonies. (Art. 1.)

Art. 140. In doubtful or extraordinary cases, the President shall decide, through the Department of Foreign Relations, to which Department the matter at issue shall be referred. (Art. 2.)

BOOK II. THE CIVIL LAW.

TITLE I.

GENERAL PRINCIPLES OF THE LAW.

CHAPTER 1.

THE LAW AND ITS EFFECTS.

(Código Civil del Distrito Federal.)

Art. 141. General Rules.

- 142. Promulgation of Laws — When Effective.
- 143. Authority and Effect of Laws.
- 144. Civil Status — Effect on Contracts
- 145. Foreign Contracts — Formalities.
- 146. Foreign Laws — Proof of.
- 147. Jurisprudence — *Ratio Decidendi*.
- 148. Liability to Suit — Place of Suit.

Art. 141. General Rules.—THE CIVIL LAW is equal for all, without distinction of persons or sexes, unless in cases specially declared. The initiation and formation of laws is governed by the provisions of the Political Constitution of the Republic. Ignorance of the laws duly promulgated is no excuse and cannot avail anyone. (Arts. 1, 18, 22.)

Art. 142. Promulgation of Laws — When Effective.—Laws, regulations, circulars and other legal dispositions for general observance, take effect from the day of their promul-

gation in the places where promulgated, unless a different day is fixed in them on which they are to go into effect; for places distant from that of promulgation, one day will be added for each twenty kilometers or fraction over ten which such places are distant therefrom. (Arts. 2-4.)

Art. 143. Authority and Effect of Laws.—No law or administrative regulation can have a retroactive effect. The renunciation of the laws in general, or the special renunciation of prohibitive laws or those of public interest, is void; and acts or contracts executed against the tenor of prohibitive laws are void, unless otherwise provided in said laws. A law cannot be abrogated or repealed except by a later law; no disuse, custom or practice to the contrary can be pleaded against the observance of the law. Laws which establish exceptions to general rules, are not applicable to any case not expressly specified in said laws. Juridical capacity is acquired by birth; but from the moment that a person is procreated he comes under the protection of the law, and is taken to be born for all the purposes of the Civil Code.¹ Laws in which public rights and good customs are concerned cannot be altered or annulled in their effects by agreements between private persons. (Arts. 5-11, 15.)

Art. 144. Civil Status — Effect on Contracts.—The laws concerning the status and capacity of persons are obligatory upon Mexicans, although they reside in a foreign country, in respect to acts which are to be performed wholly or in part in Mexico; the Mexican laws shall govern in respect to real property situated in Mexico, although it is owned by foreigners. (Arts. 12-13.)

Art. 145. Foreign Contracts — Formalities.—In respect to the form or *external* solemnities of contracts, wills and all "public instruments," the laws of the countries in which they are executed will govern; however, Mexicans or foreign-

¹ See Art. 203.

ers resident out of Mexico are at liberty to follow the forms and solemnities prescribed by the Mexican laws, in cases where the act is to be performed in Mexico.

Obligations and rights arising from contracts or wills executed in a foreign country, by Mexicans, shall be governed by the Mexican law, if they are to be performed in Mexico; if such contract or will is executed by a foreigner, and is to be performed in Mexico, the foreign maker is at liberty to choose the law to which the *internal* solemnity of the act shall be subject, with respect to personal property; but in regard to real property in Mexico, although owned by foreigners, the Mexican laws must govern. (Arts. 14, 16-17.)

Art. 146. Foreign Laws — Proof of.— He who bases his rights on foreign laws must prove their existence and that they are applicable to the case. (Art. 19.)

Art. 147. Jurisprudence — Ratio Decidendi.— When a judicial controversy cannot be decided either by the text or by the natural sense or spirit of the law (*ley*), it shall be decided according to the general principles of law (*derecho*), taking into consideration all the circumstances of the case. In case of conflict of rights (*derechos*), and in default of express law (*ley*) for the special case, the controversy shall be decided in favor of the party seeking to avoid a loss (*perjuicios*), and not in favor of the one seeking to make a gain (*lucro*); if the conflict is between equal rights or of the same kind, it shall be decided by observing the greatest possible equality between the interested parties. (Arts. 20-21; Cod. Com., Art. 1324.)

Art. 148. Liability to Suit — Place of Suit.— Mexicans and foreigners resident in Mexico may be sued before the courts of the country on account of obligations contracted with Mexicans or foreigners in or out of Mexico; and may be sued there, although they do not reside in Mexico, if they

have property there subject to the obligation contracted, or if such obligations are to be performed in Mexico. (Arts. 24-25.)

CHAPTER 2.

DOMICILE.

(Código Civil del Distrito Federal.)

- Art. 149. General Rules of Domicile.
- 150. Public Employés and Servants.
- 151. Criminals.
- 152. Corporations and Companies.
- 153. Contractual Domicile.

Art. 149. General Rules of Domicile.—The domicile of a person is the place where he habitually resides; if he has no such place, then that in which he has his principal place of business; in default of both, then the place in which he may be found. In order that the residence above mentioned be considered habitual, it must be for more than six months; if a person does not wish to lose his domicile, he must so declare before the municipal authority, who will issue him a certificate of the declaration, which will serve as proof in any place where he may reside for a longer time than required by law for the acquisition of domicile. The domicile of an unemancipated minor is that of the person to whose “*patria potestad*” he is subject; if emancipated, his domicile is that of his guardian, as is that of a person of full age under disability. The domicile of a married woman not separated from her husband, is that of the latter; if separated from him, the foregoing rules apply to her. (Arts. 27, 30-32; Cod. Civil Proc., Art. 209.)

Art. 150. Public Employés and Servants.—Public employés have their domicile in the place in which they discharge their duties; if casually in a place discharging any

duty, they do not, by such fact alone, acquire a domicile, but preserve that of their habitual residence, if they have no fixed place for the performance of their duties.

Military persons in active service have their domicile in the place where they are stationed.

Servants dwelling in the house of the master, whether minors or of full age, have the domicile of the master; but if minors, and they have property in charge of a guardian, the domicile, in respect to the property, will be that of the guardian. (Arts. 28-29, 33.)

Art. 151. Criminals.—The domicile of persons condemned to suffer punishment at a fixed place, is that place, in respect of juridical relations subsequent to condemnation; as to previous ones, they preserve their last domicile. The wife and children of such convict who do not accompany him to the place of confinement, shall retain their own domicile and not that of the condemned. (Arts. 34-35.)

Art. 152. Corporations and Companies.—The domicile of corporations, partnerships, and establishments recognized by law, is the place where their principal office (*dirección ó administración*) is situated, except as may be provided by their by-laws or special laws, provided that the domicile so fixed be within the territorial jurisdiction subject to the Civil Code. (Art. 36.)

Art. 153. Contractual Domicile.—Notwithstanding the rules in regard to domicile prescribed by the Code, parties to any contract have the right to fix the place in which the obligation shall be performed, or in which they shall be regarded as domiciled, provided that such designation is not prohibited by law. (Art. 37.)

TITLE II.

PERSONS.

CHAPTER I.

"MORAL PERSONS."

(Código Civil del Distrito.)

Art. 154. Corporate Personality or Juridical Entities.

155. Same — Legal Rights.

Art. 154. Corporate Personality or Juridical Entities.— The following are "moral persons," and as such have juridical entity: 1, The Nation, the States, and the Municipalities; 2, temporary or perpetual associations or corporations, founded for any purpose of public utility, or of public and private utility jointly; 3, civil or mercantile companies formed in accordance with law. No association or corporation has a juridical entity if it is not legally authorized or permitted. (Arts. 38–39.)

Art. 155. Same — Legal Rights.— Associations or corporations which enjoy legal entity can exercise all the civil rights relative to the legitimate interests for which they are organized. No moral person shall enjoy the privileges which the law grants to persons under disability. Companies for private interest are subject to the provisions of the contract of association. (Arts. 40–42.)

TITLE III.

CIVIL STATUS.

CHAPTER 1.

REGISTRY OF CIVIL STATUS.

Art. 156. Registers and Registrars.

157. Records — Proofs.

158. Form and Manner of Keeping.

159. Effects of Registry — Certified Copies.

Art. 156. Registers and Registrars.— Officials known as “Judges of the Civil Status” shall have charge of all records in regard to birth, acknowledgment of children, guardianship, emancipation, marriage and death of all Mexicans and foreigners resident in their jurisdictions; they will keep, in duplicate, four books, known as the “Civil Register,” which shall contain: the first, records (*actas*) of birth, acknowledgment and designation of children; the second, records of guardianship and emancipation; the third, records of marriage; and the fourth, records of death; the original records of each kind shall be entered in one of the sets of books, exact copies of them, certified by the recorder, being immediately entered in the other. The judges of civil status may act for each other in temporary absences, or where this is not possible, the judges of first instance will act for them by assignment of the political authority, who shall have the custody and inspection of the civil registers. (Arts. 43–44, 68–69.)

Art. 157. Records — Proofs.— Where no registers have been kept, or are lost or defaced, or some pages are missing on which the record was presumably made, the fact to be established may be proven by documents or witnesses, but if one of the registers exists it shall be the only evidence ad-

missible. The civil status of persons can be proven only by the respective entries in the register, no other document or means of proof being admissible except as herein, and in Art. 208, provided. (Arts. 45-46.)

Art. 158. Form and Manner of Keeping.— All the books of the civil registry shall be officially certified by the local political authority before being opened, and must be renewed each year, the original books and all documents appertaining to them remaining in the archives of the registry, the duplicates being deposited with the political authority, within one month, under penalty of loss of office; if any pages remain in blank at the end of the year they will be rendered useless by cross marks, a certificate being added of the number of entries and of inutilized pages, and an alphabetical index will be kept from day to day.

The records in the civil registers shall contain the year, day and hour when the parties appeared, and detailed data from all documents they may present, and of the names, age, occupation and residence of all persons therein mentioned so far as possible; witnesses must be of lawful age, and preferably those designated by the parties. Nothing shall be inserted in the records, even by way of note or reference, except what is required by law to be declared as part of the record. If parties cannot personally appear, they may do so by attorney with special power for the purpose, executed at least by private document before two resident witnesses. When the record is entered in the register the judge must read it to the parties and witnesses, all of whom must sign, if possible; the fact of reading the entry and that the parties assented to it, and the cause of any one not signing, will be recited in the record; any party may himself read the record or have another read it and sign it for him if he cannot. If a record begun is not finished it will be crossed out with two lines, and the reason for suspending it will be stated and signed by the judge, parties and witnesses.

The entries will be recorded and numbered in the registers one after the other, without leaving any whole line blank; all numbers and dates will be expressed in figures and words; no abbreviations can be used, and nothing written shall be scratched or blurred, any word being cut out by a line through it, leaving it legible, except in the case of separate recognition of children by either parent,¹ and all words crossed out or interlined will be mentioned at the end; disregard of these provisions is subject to a fine of twenty-five pesos. The records can only be kept in the books prescribed, and falsification of entries or insertion of any matter not required by law, is subject to the penalty of loss of office, besides criminal liability and payment of all damages. All documents and data presented by the parties will be numbered and sealed and filed in the archives properly indexed. The judge cannot certify records relating to himself, his wife, or their relatives in any degree, but they will be entered in the same books and certified by the first political authority of the place. (Arts. 47-60, 62.)

Art. 159. Effects of Registry — Certified Copies.— Certified copies of the records, data and documents must be issued to any person requesting them; certified copies of the records are full proof in and out of court. The records are not rendered void because of unsubstantial defects, unless the former are judicially declared forgeries, but the judge is liable to the prescribed penalties. The registers are only full proof of the matters required to be recorded in them, other recitals being disregarded. Records of civil status of Mexicans born, recognized, put under guardianship, emancipated, married or dying outside Mexico are sufficient where made in accordance with the laws of the country in which they are made and recorded in the civil register in Mexico. At the request of parties or where required by law, records referring to previous ones may be noted on the margin of the latter, such annota-

¹ See Art. 207.

tion being inserted in all certified copies issued. (Arts. 61, 63-67.)

CHAPTER 2.

BIRTH RECORDS.

Art. 160. When and How Registered.

161. Bastards, Foundlings, etc.

162. Births During Journeys.

Art. 160. When and How Registered.—Births must be registered within fifteen days, by presenting the child to the judge of civil status, in his office or in the paternal home, or if there is no judge in the place, to the political authority, who will issue the certificate, which will be presented to the judge for registry. The birth of the child will be declared by the father, or in his default by the physician, midwife, or others present at the birth, and by the person in whose house it occurred if it took place away from the paternal home. The birth record will be immediately entered in the presence of two witnesses, who may be designated by the interested parties; it must state the day, hour and place of birth, the sex, name and surname of the child, and whether presented alive or dead; if the child is presented as legitimate, the names and residence of the parents, grandparents, and of the person presenting it will be stated. In case of twins, the record will show which was born first and any peculiarities which distinguish them, as reported by the persons present at the birth. If the child has died, two records will be made, in the respective books, one of the birth and the other of the death. (Arts. 70-74, 91-92.)

Art. 161. Bastards, Foundlings, etc.—Only the name of the father or of the mother of an illegitimate child will be entered at his or her request, made in person or by special power of attorney, or the judge will go to the house of either

parent requesting it, and will enter the name given, and recite the circumstances; if neither parent asks for his or her name to be recorded, the child will be recorded as of unknown parents. If the child is adulterine the names of the parents, if married persons, cannot be entered even if they request it, but if one is unmarried his or her name may be entered; but if the mother is a married woman living with her husband, in no case can the name of any other man be entered as the father. If the child is incestuous, the name of but one parent can be entered. Every person finding a newborn child, or on whose premises it is left exposed, must present it to the judge, with the clothes, papers and other things found with it, and declare all the circumstances of the find; the same thing must be done by the keepers of any prison, hospital, and other public place; the record in such cases will recite all the circumstances reported, the sex and apparent age of the child, the name given it, and that of the person or institution taking charge of it, and if any objects or papers are found with it indicating its identity, they will be recited in the record and deposited in the archives, and a formal receipt for the same given to the person taking charge of the child. The judge and witnesses are absolutely prohibited from making any inquiry into the parentage, directly or indirectly, and the record will recite only what is stated by the person making the presentation, although it may appear false, and subject to punishment under the Penal Code. (Arts. 75-85.)

Art. 162. Births During Journeys.— If a birth occurs on board a Mexican ship, the parties will have a certificate made of the fact, with the details heretofore prescribed, and request the captain or master and two witnesses to sign it, stating the fact if there be none; they will deliver such certificate for recording to the judge of the civil status of the first Mexican port touched at, or if there is no judge there, to the local authority, who will at once forward it to the judge

at the place of residence of the parents. If the birth occurs on a foreign ship, the provisions of Art. 145 will be observed with respect to formalities of registration. If the birth takes place during a journey by land, it may be registered in the place where it occurs, or at the parent's residence, according to the foregoing rules; if registered at the place, a copy of the record will be sent to the judge at the domicile if the parents so request; in the other event, the registry will be made at the domicile within fifteen days plus one day additional for every twenty kilometers or fraction of distance. (Arts. 86-90.)

CHAPTER 3.

NATURAL AND SPURIOUS CHILDREN.

Art. 163. Acknowledgment — Effects.

164. Guardianship Records.

165. Emancipation Records.

Art. 163. Acknowledgment — Effects.— If either or both the parents of a natural child acknowledge it upon registry of its birth, the record will state that it is a natural child, and the name of the parent acknowledging it, such record having the effect of a legal acknowledgment; if the acknowledgment is made after the registration of birth, or the registry was omitted or not made within the legal term, a separate record will be made, which besides the foregoing requirements, will show: the consent of the child, if of lawful age, to be acknowledged; if a minor over fourteen, the consent of himself and his guardian; if under fourteen, that of his guardian alone. Where the acknowledgment is made in any of the ways provided in Art. 207, the original or a certified copy of the document will be presented to the registry, and the material parts copied into the record; failure to register such acknowledgment does not affect its validity, but the party

responsible for the omission will be fined from twenty to one hundred pesos by the judge giving effect to the acknowledgment. In such separate records of acknowledgment reference will be made to the birth record, on the margin of which will be noted a reference to the former; if made in a different registry, the judge recording the acknowledgment will remit a copy to the registry of birth to be noted as above. The designation of spurious children must be made in the birth record, those being considered designated for legal purposes whose father's or mother's name appears in due form in the record; such designation may also be made by will, observing the same rules in regard to registry of birth; the provisions of Arts. 161, 207 and 208 being applicable so far as pertinent. (Arts. 93-100, 361.)

Art. 164. Guardianship Records.—Within seventy-two hours after the publication of the decree appointing a guardian, the latter must present a certified copy of the decree to the civil registry to be recorded, the curator being required to enforce compliance; the record must contain: the name, surname and age of the person under disability, and the kind of disability he is under, and the name, occupation, age and residence of the person who previously exercised the *patria potestad*, and of the guardian and curator, and the nature and circumstances of the security given by the guardian, and the date of the decree and the name of the judge who rendered it; omission of registry does not affect the guardianship, but the guardian and curator are subject to penalty as in the preceding Article; the same provisions in regard to annotating the birth record will be observed. (Arts. 101-104.)

Art. 165. Emancipation Records.—A separate record will not be made of emancipation by marriage, but the fact will be noted on the margin of the birth records of the parties, stating the date of marriage and the number and page of the record; where made by last will, the record will contain

the text of the judicial act authorizing the emancipation, the birth record being annotated as above provided, the same rules applying to the omission to make the registry. (Arts. 105-108.) ²

CHAPTER 4.

RECORDS OF DEATH.

Art. 166. Deaths and Burial.

167. Violent and Absentee Deaths — Records.

Art. 166. Deaths and Burial.— No burial can take place without the written authorization of the judge of civil status, who will prudently assure himself of the death, nor until twenty-four hours after the death, unless otherwise ordered by the police. The record of death will be entered in the proper register, and set out the data ascertained by the judge, or the declarations made to him, and must be signed by two witnesses, preferably relatives, if any, or neighbors, one of whom must be the person in whose house the deceased died, if away from his own, or one of the nearest neighbors. The death record must contain: the name, age, occupation and residence of the deceased, and if he were married or widowed, those of the other spouse, also those of the witnesses, and whether relatives and in what degree; the names of the parents of the deceased, if known; the disease of which he died, and the place where he is to be buried; the hour of his death, if known, and if the death were violent, all the information to be had about it. The owners or residents of houses in which a death occurs, officers of prisons, hospitals and other public places, and keepers of inns, hotels and lodging-houses, must give notice to the judge of civil status within twenty-four hours after the death. If there is no registry in the place, the political or municipal authority will perform

²As to Marriage Records, see *post* Arts. 173-175

these acts, and will remit to the judge a copy of the record which he makes to be entered in the register. The death record will be noted on the birth and marriage registers with reference to the page of the death register. (Arts. 131-135, 144.)

Art. 167. Violent and Absentee Deaths — Records.— Whenever the judge of civil status suspects a death was violent, he will notify the judicial authority, giving it all the data which he has, so that it may investigate it according to law, and the latter will notify the judge of its investigation of a death so that he may make the proper record. If the name of the deceased is not known, all marks and data which may serve in time to identify him will be entered, and any future information will be notified to the judge to be entered on the margin of the record; in cases of disasters or otherwise where it is difficult to identify the remains, the record will be made from the declarations of persons recovering them, stating as far as possible all matter of identification. If no body is recovered, but it is certain that some one has perished at the place of disaster, the record will contain the declarations of persons who knew the person who has disappeared and other details that can be had. Where the death occurs at sea aboard a Mexican vessel, the record will be formed as above provided as far as possible, and be signed by the captain or master, who will observe the same proceedings as prescribed in Art. 162 in case of births. In cases of death away from home, a copy of the record will be forwarded to the judge at the domicile to be entered in the register; military chiefs will give like notice of deaths in the service; and courts will give notice of executions under sentence of death to the judge of civil status of the place of execution, stating the name, status, age and occupation of the criminal; in such cases and others of violent death in prisons and houses of detention, the record will not state this circumstance. (Arts. 136-143.)

CHAPTER 5.

RECTIFICATION OF CIVIL STATUS RECORDS.

Art. 168. Correction of Records — Procedure.

Art. 168. Correction of Records — Procedure.— A record of civil status can only be rectified or modified by judicial decree, by the judge of the place where the record was made, except in cases of voluntary acknowledgment of a child by its father as provided by the Code, the Ministerio Público and the judge being heard in all cases. The correction may be demanded on account of falsity, where the event recorded is alleged not to have occurred, or by way of amendment of some name or other circumstance, whether essential or immaterial.

The correction of the record may be had at the instance of the persons whose status is concerned, or who are mentioned in the record as related with such person, or by the heirs of any such persons, or by any descendant or heir of a child as provided in Art. 205.

The action is by ordinary suit; besides summons to the parties, the judge will publish the demand for thirty days, which may be contradicted by anyone who appears; all the recourses allowed by law in suits of major interest will be admitted, and although the judgment is not appealed, the second instance may always be availed of. Final judgment will be notified to the judge of civil status, who will note it on the contested record; such final judgment is conclusive on all persons, although not parties to the action, except that where one proves that he was absolutely disabled from appearing in the suit, he may present proofs to contest it, proceeding in the same way as in the original suit, but the former judgment will be good and effective until a new final judgment to the contrary is rendered. (Arts. 145–154.)

CHAPTER 6.

RELATIONSHIP; ITS LINES AND DEGREES.

Art. 169. Relationship — Computation.

Art. 169. Relationship — Computation.— Relationship by consanguinity and affinity only is recognized by law; consanguinity is the relationship between persons descended from the same root or trunk; affinity is the relationship contracted by marriage consummated or by unlawful copulation, between the man and the relatives of the woman, and between the woman and those of the man. Each generation forms a degree, and the series of degrees constitutes what is called line of relationship; the line is direct or collateral (*transversal*); the former composed of the series of degrees between persons descended one from another; the transversal is composed of the series of those not so descended one from the other, although they may descend from a common trunk or ancestor. The right line is descendant or ascendant; ascendant is that which unites any one to his ancestor or the trunk from which he proceeds; descendant is that which unites the progenitor to those proceeding from him; the same line is, therefore, ascendant or descendant, according to the point of departure and the relation had in view; its degrees are counted by the number of generations, or by that of the persons excluding the progenitor. In the transversal line the degrees are counted by the number of generations, ascending by one line and descending by the other, or by the number of persons there are from one of the extremes under consideration to the other, excepting that of the common progenitor or trunk. (Arts. 181–188.)

TITLE IV.

MARITAL RELATIONS.

CHAPTER 1.

CONTRACT OF MARRIAGE.

Art. 170. Contract — Requisites.

171. Impediments to Marriage — Consent.

172. Foreign and Mixed Marriages.

Art. 170. Contract — Requisites.—Marriage is the lawful partnership of one man and one woman united in indissoluble bonds in order to perpetuate their species and to assist each other to bear the burden of life; the law does not recognize future espousals, nor any conditions contrary to the essential purposes of marriage; the marriage must be celebrated before the officials and with all the formalities prescribed by law. (Arts. 155–158.)

Art. 171. Impediments to Marriage — Consent.—Impediments to the celebration of the contract of marriage are: 1, Want of legal age, unless dispensated; 2, want of the consent of the person in exercise of the *patria potestad*, guardian or judge, as the case may be; 3, essential mistake as to the person; 4, legitimate or natural consanguinous relationship without limitation of degree in direct ascendant or descendant line; in the equal collateral line the impediment extends to brothers and half brothers; in the same unequal collateral line the impediment extends only to uncles and nieces and *vice versa*, within the third degree, unless dispensated, the degrees being computed according to Art. 169; 5, relationship by affinity in right line without limit; 6, attempts against the life of husband or wife in order to marry the survivor; 7, serious force or fear; and in cases of abduction, the impediment continues between the abductor

and the abducted until the latter is returned to a safe place where she may freely manifest her will; 8, constant and incurable insanity; 9, an existing lawful marriage with another person. Only the impediments of want of age and of consanguinous relationship in unequal collateral degrees can be dispensed.

Males under fourteen and females under twelve cannot contract marriage, except upon dispensation granted by the superior political authority in exceptional cases and for grave cause; nor can persons of either sex under twenty-one years of age, without the consent of their father, or if none, of their mother, although she be remarried; if no parents, then respectively, of the paternal, and if none, of the maternal grandfather; if neither, then of the paternal, and if none, of the maternal grandmother; if none of these, of the guardian; if no guardian, the local judge of first instance will supply the consent. Consent given by an ascendant may be revoked before the marriage by formal act before the judge of the civil register, or if the former should die, by the person who would have had the right of consent; such right applies only in cases of legitimate and legitimated or recognized natural children, and cannot be exercised by guardians or judges who have once given consent. Where consent is refused, or revoked, without apparent reason, the interested party may apply to the first political authority of the place, who after hearing all concerned may remove the disability of non-age, otherwise the marriage cannot be celebrated. A guardian or curator, or their descendants, cannot marry his ward during or after the stewardship, unless he obtains dispensation, which will not be granted until his fiduciary accounts are legally approved; if he should so marry, the judge will at once appoint an *ad interim* guardian who will take and administer the property until dispensation is obtained. All dispensations will be granted by the superior political authority. (Arts. 159–173.)

Art. 172. Foreign and Mixed Marriages.—Marriages celebrated between foreigners in a foreign country, which are valid under the laws of that place are valid for all civil effects in Mexico. Marriages in a foreign country between Mexicans or between a Mexican and a foreigner will also be given civil effect in Mexico where shown to have been celebrated in accordance with the laws of the place where made, and that the Mexican has not violated the requirements of the Civil Code in regard to impediments, capacity to contract marriage and consent of ascendants. In cases of urgency not admitting of recourse to the Mexican authorities, the necessary consent and dispensation may be supplied by the nearest Mexican minister or consul, the former being preferred in all cases. In case of imminent danger of death where there is no minister or consul, or on a Mexican ship at sea, the marriage will be valid upon proof of those two facts, and that the impediment was dispensable and was declared to the official, sea captain or shipowner, as the case may be, performing the ceremony; the certificate of such marriage must be recorded in the civil register of the domicile of the Mexican consort within three months after returning to Mexico; failure to so register it will not invalidate the marriage, but until it is registered the contract will be given no civil effect. (Arts. 174–180.)

CHAPTER 2.

THE CEREMONY OF MARRIAGE.

Art. 173. Declaration of Intention — Publication.

174. Oppositions — Proceedings.

175. Celebration of Marriage — Record.

Art. 173. Declaration of Intention — Publication.—Persons wishing to contract marriage must appear before the judge of civil status of the domicile of either party, who will

make an entry in the register, which shall state: the names, occupations and domiciles of both of the contracting parties, of their parents if known, and of the witnesses whom the parties must present to verify their capacity to legally contract marriage; the consent of the persons whose consent to the marriage is necessary, or evidence that no consent is necessary; the certificate of widowhood, if either party has been previously married, and the dispensation of impediments, if any. If from the declarations of the witnesses it appears that the parties may legally be married, a copy of the record will be posted for fifteen days in a conspicuous and accessible place in the judge's office, and two other copies in the usual public places, which must be replaced by the judge if destroyed or defaced; if either party has not for the past six months resided in the same place as the judge, he will send copies of the record to their former place of residence to be published for fifteen days, and he may do so although they have resided in the same place during such six months; if during said time either party has had no fixed residence, the publication must be for two months. Publication can be dispensed only by the superior political authority of the place where the marriage is to be celebrated, for good cause shown to his satisfaction, the danger of death of either party being a good cause; the judge will make a record of the application for dispensation, a copy of which, with the proofs adduced, will be submitted to the political authority. The judge of the previous domicile to whom copies of the record are sent for publication, will at the expiration of the time make a record of the fact, and of any opposition presented, and remit a certified copy of it to the judge before whom the marriage is pending, who cannot proceed until he receives such copy; nor can he celebrate the marriage after six months from the publication without renewing the same. (Arts. 109-120.)

Art. 174. Oppositions — Proceedings.— If no impediment

is denounced during the publication and three days afterwards, or is declared not to exist or is dispensed by the political authority, the facts will be entered in the record, and the judge, in agreement with the parties, will fix the place, day and hour for the celebration of the marriage. If during such time any impediment is denounced to the judge, he will make a record of it before two witnesses, setting out the denouncement and the name, age, status and residence of the denunciante, which will be signed by all parties and remitted to the judge of first instance, who will decide the impediment according to the rules stated in Art. 171. The denouncement may be made by any one, subject to the penalties prescribed by the Penal Code for false testimony in civil matters if it be false; upon the impediment being adjudged not to exist, the denunciante will be condemned to the payment of all costs and damages. Before sending the denouncement to the judge of first instance, the judge of civil status will advise both parties of the alleged impediment, and will suspend further proceedings until final judgment is rendered, noting the denouncement on the margin of the marriage record. Anonymous denouncements or those made in any other way where the denunciante does not personally appear, will only be allowed when supported by the necessary proofs, the whole of which will be referred to the judge of first instance and his decision awaited; the marriage cannot be celebrated, although the denouncement is withdrawn, until final judgment or dispensation is had. (Arts. 121-127.)

Art. 175. Celebration of Marriage — Record.— The marriage will be celebrated in public at the time and place designated; the parties must appear before the judge personally or by special attorney-in-fact, and accompanied by three witnesses, relations or strangers. The judge will receive the formal declaration of the parties of their wish to be married, and will immediately enter in the register a

record which must state: 1, The names, ages, occupations, residences and place of birth of the parties and of their parents; 2, the consent of their parents, grandparents or guardians, or their rehabilitation of age; 3, whether there is any impediment or its dispensation; 4, the declaration of the parties of their will to be united in marriage, taking and giving themselves mutually as husband and wife; 5, the declaration that they are united, which will be made by the judge in the name of society; 6, the names, ages, status, occupation and residence of the witnesses, and their declaration whether they are or not related to the parties, and if so in what degree and line. (Arts. 128–130.)

CHAPTER 3.

RIGHTS AND OBLIGATIONS ARISING FROM MARRIAGE.

Art. 176. Reciprocal Rights and Duties.

177. Disabilities of Wife — Marital License.

Art. 176. Reciprocal Rights and Duties.— Husband and wife are bound to reciprocal fidelity, to each contribute his part to the objects of marriage and to mutually succor each other. The wife must live with her husband, and must follow him, if he requires, wherever he may fix his residence, unless otherwise stipulated in the marriage capitulations, or she is exempted from such obligation by the courts when he removes to a foreign country; the wife who has property of her own must give aliments to her husband when he has none or is disabled to work; she must obey him in domestic matters and in those concerning the education of their children and the management of their property.

The husband must protect his wife, and give her aliments although she brought no property; he is the lawful administrator of the matrimonial property, but if he is a minor he must have judicial authorization to convey or encumber the

real estate and a guardian for judicial business. (Arts. 189-196.)

Art. 177. Disabilities of Wife — Marital License.— The husband is the lawful representative of his wife; without his written license, she cannot appear in suit by herself or by attorney, even in those pending at the time of marriage, nor make contracts, nor acquire property or alienate her property except in the cases provided by law; such license may be general or special. If the husband is absent from home, or refuses without good reason to authorize his wife to litigate or contract, the authorization may be granted by the judge; such judicial authorization must be had to enable her to litigate or contract, where both she and her husband are minors, in which case the authorization must always be special, or to contract with her husband, except in regard to the contract of mandate (powers of attorney).

A married woman of legal age does not need either marital license or judicial authorization to defend herself in criminal cases, to litigate with her husband, to dispose of her property by will, when the husband is in a state of interdiction, or cannot grant the license because of sickness, nor when they are legally separated, nor when she has a commercial establishment. The invalidity of her acts because of want of such license or authorization can only be pleaded by herself, by the husband, or by their heirs; if the husband has expressly or tacitly ratified her acts, no one can invalidate them or plead their invalidity, not even sureties or co-parties to the contract. (Arts. 197-204.)

CHAPTER 4.

ALIMENTS OR SUPPORT. (*Alimentos.*)

Art. 178. Duty to Support — Security.

Art. 178. Duty to Support — Security.— The obligation to provide support is reciprocal, and between husband and wife

continues even after divorce, and in other cases provided by law. Parents and children have the same duty, and where the nearest ascendant or descendant is missing or unable to provide, it devolves on the next in degree; if there are no ascendants or descendants, then on uncles and aunts, through both parents, through father alone or mother alone, respectively. Brothers and sisters are required to support their minor brothers and sisters only until the latter are eighteen years of age.

Aliments or support consist of food, clothing, lodging and assistance in case of sickness, and in case of minors, the necessary expenses of primary education and of providing them some honest trade, art or profession adapted to their sex and personal circumstances, but not the capital for the same, nor for dowry. The duty to support may be discharged by assigning an adequate annuity to the person entitled, or by taking him into the family; the support must be in proportion to the ability of the giver and to the needs of the recipient; where several are subject to the duty, and all or some are able to provide, the judge will prorate their shares; if only one is able to provide, he must do it all.

Action to require security for support by mortgage, bond or deposit to cover it, may be brought by the person entitled to the support, by his ascendant exercising the *patria potestad*, by his guardian, brothers and sisters, or by the Ministerio Público; if no one else appears for the minor, the judge may appoint an *ad interim* guardian, who must give security for the annual amount of support, or sufficient to cover any fund which he may administer. Where the father has the usufruct of his child's property, the amount of support may be deducted from the income if sufficient, the father supplying any deficiency. Where the needs of the recipient arise from his bad conduct, the judge may reduce the amount contributed for his support and may if necessary deliver him to the proper authorities.

The right to support cannot be renounced or compromised.

but the duty to provide it ceases when the person providing it is unable to provide and when the recipient ceases to need it. (Arts. 205–225.)

CHAPTER 5.

MARITAL PROPERTY RIGHTS.

Art. 179. The Conjugal Partnership — Incidents.

180. Matrimonial Capitulations.

Art. 179. The Conjugal Partnership — Incidents.— Marriage may be contracted on the basis of a conjugal partnership or on that of separation of property, dowry in either case being regulated as hereinafter provided; the conjugal partnership may be either voluntary or legal, the former being governed by the marriage capitulations under which it is created, and where these are silent, by the rules as to the legal partnership,¹ and both being subject to the provisions as to ordinary partnerships except as herein prescribed. The conjugal partnership begins at the moment of marriage; the voluntary may be dissolved whenever so provided in the capitulations, and the legal by the dissolution of the marriage or the decree of presumption of death of the absentee spouse; decrees of necessary divorce and absence terminate, suspend or modify the conjugal partnership as provided by law; voluntary divorce and separation of property have such effect as the parties may agree; unjustified abandonment of the conjugal domicile by one spouse terminates the partnership so far as favorable to him from the day of abandonment, and can only be regained by express consent.

The husband is the lawful administrator of the conjugal partnership, the wife only administering it by consent or decree of court, in case of absence or impediment of the husband or when he has wrongfully abandoned the home.

¹ See Arts. 182–190.

The separation of property is governed by the marriage capitulations on the subject and by the provisions of Art. 191; it may be absolute or partial; in the latter case, the rules of legal partnership apply where the capitulations are silent, unless the parties form a voluntary partnership. (Arts. 1965-1977.)

Art. 180. Matrimonial Capitulations.— These are the agreements made by husband and wife to constitute the voluntary partnership or separation of property, and for the administration of either; they may be executed before or during marriage, and may embrace present and after-acquired property; they cannot be altered or revoked after marriage except by express consent or judicial decree. The capitulations, and any alteration in them, must be by *escritura pública*, all parties interested joining in the latter, which will be annotated on the protocol of the original articles and certified copies of it, and are ineffective as against third persons if not so noted. (Arts. 1978-1985.)

CHAPTER 6.

THE VOLUNTARY PARTNERSHIP.

Art. 181. How Constituted — Provisions.

Art. 181. How Constituted — Provisions.— The *escritura* of voluntary partnership must contain: 1, An inventory of the property contributed by each party, stating its value and any incumbrances; 2, statement of whether the partnership is universal, or limited to a part of the property, and if the latter, what part and its value; 3, the character which the property afterwards acquired jointly or separately by the parties is to have, and the manner of proving its acquisition; 4, the declaration whether the partnership is only of profits, stating what are in common and the part belonging to each;

5, an itemized statement of the debts of each party, and how they and others afterwards contracted are to be paid; 6, definite statement of the powers of each party in the administration of the property and enjoyment of its products, and all conditions for disposing of the same; besides all other provisions not contrary to law, which they may deem proper. Every capitulation by which one party is to have all the profits or be liable for losses and debts beyond his proportion of capital or profits, is void. Where it is provided that one party is only to have a fixed amount, the other or his heirs must pay the amount whether or not there are any profits.

Creditors having no knowledge of the terms of the voluntary partnership, may bring their actions according to the rules of the legal partnership, but if one party is not liable under the capitulations, he may recover what he has paid out of the *gananciales*, and if insufficient, out of the individual property of the other. Every provision involving transfer of any of the property of either party is considered a donation and governed by the rules on that subject. Provisions contrary to law or good customs, derogatory to the proper authority of either party in the family, contrary to the prohibitions of the Code, and to the legal rules in regard to divorce, emancipation, guardianship, and to the dowry and inheritance rights of the parties or their lawful heirs, are void. A minor capable of contracting marriage may make capitulations where the same persons whose consent is necessary to his marriage concur in them. The capitulations must contain a definite statement of the legal provisions modified by them, and under penalty of fine the notary must recite in the *escritura* that he has advised the parties of the terms of the law; certain Articles mentioned cannot be modified. In the absence of capitulations the legal partnership takes place. (Arts. 1976-1996.)

CHAPTER 7.

THE LEGAL PARTNERSHIP.

Art. 182. Foreign Marriages — What Law Applicable.

183. Individual Property of Parties.

184. Community Property — Gananciales.

185. Same — How Ascertained.

Art. 182. Foreign Marriages — What Law Applicable.— Marriages contracted out of Mexico by persons afterwards coming there to reside, are subject to the laws of the country where celebrated, except in respect to real estate situated and contracts or wills to be performed, in Mexico, as provided in Art. 145, and except as they may afterwards stipulate by capitulations made in conformity with this Code; natives and residents of Mexico who contract marriage elsewhere are subject to the provisions of this Title and to those of Arts. 144 and 145. (Arts. 1997–1998.)

Art. 183. Individual Property of Parties.— Each party is entitled to the property owned at the time of marriage, or previously possessed and afterwards acquired by prescription, also to that afterwards acquired by gift of fortune, donation, inheritance or legacy to either one individually, or acquired by *retroventa* or other personal title antedating marriage, the costs of perfecting the title being borne by the owner; if any donation is “onerous,” and the consideration has been paid by the partnership, the amount will be deducted from the dowry or from the husband’s capital, as the case may be. Property acquired by the purchase or exchange of real estate of either party for investment in other real estate in its stead, is also individual; where the price is not invested in other real estate, it belongs individually to the one owning the real estate sold, if the latter was brought into the conjugal partnership without being appraised, but if appraised when the marriage was celebrated

or the capitulations executed, the appraised value will belong to the owner, and the increase or decrease of value in the sale will be considered as a profit or loss of the partnership. Property acquired by either from merger of ownership and usufruct, as well as the costs occasioned thereby, is individual; periodical payments other than usufruct, received by either party as maturing during the marriage, are individual and not *gananciales*. (Arts. 1999–2007.)

Art. 184. Community Property — Gananciales.— The joint estate of the legal partnership is composed of: 1, All property acquired by the husband in the militia, or by either of the parties in any scientific, mercantile or industrial business or mechanical work; 2, property acquired by inheritance, legacy, or donation made to both parties without designation of portions; if portions are designated and are unequal, only the products are common; 3, the price taken from the common funds to acquire property by *retroventa* or other individual right of either party antedating the marriage; 4, the cost of remaking credits (*refacciones de créditos*) and of any improvements and repairs of property of one of the parties; 5, the excess or difference in price given by one party in the sale or exchange of individual property to be replaced by other; 6, property acquired during the marriage at the expense of the common fund either for the community or for only one of the parties; 7, products, accessions, rents and interest received or become due during the partnership, on account of either the common or individual property. The following also belong to the common estate: acquisitions from usufruct; buildings erected during the partnership with its funds on ground of one party, who will be credited with the value of the land; increase of cattle belonging at marriage to one party; mines denounced during marriage by one of the parties, and mining stock or shares acquired with common funds; such shares belonging to either party are individual, but the income

from them during the partnership belongs to the common fund; "fruits" pending at the time of dissolving the partnership, which will be divided in proportion to the time it has continued during the last year, the years being computed from the date of marriage; treasure casually found belongs to the finder, but that found by industry belongs to the community. (Arts. 2008-2015.)

Art. 185. Same — How Ascertained.—Property and its products, which one of the parties should have acquired individually during the partnership, but which were not acquired until after its dissolution because of want of notice or wrongful prevention, are considered as acquired during the partnership; all property in possession of either party at the time of separation of property, is presumed to be *gananciales* until otherwise proven, and the declarations or admissions of either or both of the parties, although made judicially, are not sufficient proof; in such cases the admission is considered as a donation which is not effective till the death of the donor. *Gananciales* cannot be renounced during the marriage, but upon its dissolution or the separation of property, those acquired may be renounced by *escritura pública*. An inventory of the individual property of each party at the time of marriage will be made, in the capitulations or in a separate public instrument; if such inventory is not made, the property is presumed common until its ownership is proven at any time. (Arts. 2016-2022.)

CHAPTER 8.

ADMINISTRATION OF LEGAL PARTNERSHIP.

Art. 186. Rights of Husband and Wife.

187. Payment of Debts and Expenses.

Art. 186. Rights of Husband and Wife.—The ownership and possession of the community property is in both hus-

band and wife while the partnership continues. The husband can sell and encumber the common personal property, upon a valuable consideration, without the wife's consent, but he can neither sell nor encumber the community real estate in any way without her consent; in case of unreasonable opposition, such consent may be supplied, after hearing her, by judicial decree. Nor can the husband reject or accept a common inheritance without her consent, which may be supplied in the same way; only the individual property of the husband and his half of the *gananciales* is responsible for an acceptance without such consent or decree. Neither husband nor wife can dispose by will except of his or her half of the *gananciales*; no alienation of *ganancial* property by the husband contrary to law or in fraud of his wife can prejudice her or her heirs; the wife cannot encumber the *gananciales* without the husband's consent; she can only administer the property with his consent or in case of his absence or impediment. (Arts. 2023-2032.)

Art. 187. Payment of Debts and Expenses.—The wife may pay the ordinary family expenses out of the *gananciales*; where she is legally a surety, she must pay out of her individual property in case of separation of property, and out of the *gananciales* and her part of the joint property in case of conjugal partnership. Debts contracted during the marriage by both parties or by the husband alone, or by the wife with his authority or in his absence or impediment, are a charge against the community, except those arising from the crime or wrongful act of one of the parties, and debts which are a charge upon the individual property, other than for *censos* or annuities the amount of which has entered into the common fund.

The individual debts of either party before marriage are not a charge on the community, except where the other party was personally bound or they were contracted for the benefit of both parties, including in such debts those incurred

by any act of the parties before marriage, although the obligation is made effective during the partnership; if the party alone liable has no means for paying, they can only be paid out of his or her part of the *gananciales* after the community is dissolved, the creditors being also entitled to the right given by Art. 723. The community is liable for arrears of annuities or income become due during marriage on obligations charged either on the individual or community property; also for costs of repairs necessary to preserve the individual property of either party, but not otherwise, and for all costs of preservation of the common property; also for the expenses of family maintenance, for the education of the common children and of legitimate minor stepchildren; also for any amount given or promised by both parties to their common children to start them in business; also the costs of inventories and other expenses of liquidation and delivery of property which formed the community estate. (Arts. 2033-2046.)

CHAPTER 9.

LIQUIDATION OF LEGAL PARTNERSHIP.

Art. 188. Suspension and Dissolution.

189. Inventory — Distribution.

190. Same — Settlement.

Art. 188. Suspension and Dissolution — Effects.— The legal partnership is terminated and suspended in the cases provided in Art. 179; in case of nullity it is considered existent until final judgment if both parties acted in good faith, likewise where only one acted in good faith, if its continuation is favorable to the innocent party, otherwise it will be considered void from its beginning; if both parties acted in bad faith, the partnership will be considered as void from the time of marriage, and the rights of third persons

against the partnership property are unaffected. In cases of necessary divorce the parties are restored to the rights stated in Art. 200; in cases of voluntary divorce or simple separation of property, the liquidation will be made according to any agreement between the parties approved by the judge, except as provided in the capitulations and in this chapter; the suspension or dissolution does not affect creditors until notified of the judicial decision. The suspension of partnership ceases upon the expiration of the time, if any, fixed, and upon the reconciliation of the parties in cases of divorce; if the marriage is dissolved before such time, the partnership is held terminated from the beginning of the suspension, notwithstanding the provisions of Art. 179. (Arts. 2047-2055.)

Art. 189. Inventory — Distribution.— Upon the dissolution or suspension of the partnership, an inventory will be at once made, which will specifically include not only all the property which formed the legal partnership, but also: 1, amounts paid by the partnership funds and which are exclusively chargeable to the individual; 2, the amount of donations and that received from fraudulent transfers of *gananciales*; but the inventory will not include the personal effects and ordinary clothing of the parties, which will be delivered to them or their heirs. All debts against the partnership will then be paid; to each party will be returned what he or she brought into the partnership, and the balance, if any, will be divided between them equally; in case of losses, one-half will be deducted from what each party brought into the partnership, and if only one brought in anything, the whole loss will be deducted from his share. The *gananciales* will be divided equally between the parties or their heirs, irrespective of the amount of property either party contributed to the partnership or acquired during it, and although either of them had no property at the time; but if the dissolution of the partnership is brought about by nullity of

the marriage, the party guilty of bad faith shall have no part in the *gananciales*; in such case the share of the guilty party will be applied to his children, or if he has none, to the innocent party; if both acted in bad faith, the *gananciales* will be applied to their children, if any, and if not, will be divided between the parties in proportion to what each brought into the partnership. (Arts. 2056–2064.)

Art. 190. Same — Settlement.— Losses and injuries to unappraised real estate, although caused by accident, will be paid from the *gananciales*, if any, otherwise the owner will receive the property in the condition it is in; the owner cannot recover for depreciation in any case unless it is due to the fault of the administering party. The widow's mourning will be paid out of the husband's estate. The survivor will continue in possession and administration of the partnership property, in conjunction with the testamentary representative, until the partition. Where two or more marriages contracted by one person are to be settled at the same time, ordinary proofs are admissible, in the absence of inventories, to ascertain the property of each partnership; in case of doubt, the *gananciales* will be divided between the several partnerships in proportion to the time they lasted and to the value of the individual property of each party. The formation of inventories, and the formalities of partition and adjudication of the property are governed by the provisions of the Code of Civil Procedure. (Arts. 2065–2071.)

CHAPTER 10.

SEPARATION OF PROPERTY.

- Art. 191. How Effected — Agreements.
192. Judicial Sentence — Incidents.

Art. 191. How Effected — Agreements.— Separation of property may take place by virtue of capitulations made

before or during marriage, by agreement between the parties, or by judicial sentence. In such capitulations, all the provisions of the preceding chapters in respect to separation of property will be observed, and the parties will set out such conditions as they deem proper for the administration of their property, and will also observe the following provisions: the parties retain the ownership and administration of their property, and contribute to the support and education of their children and other matrimonial burdens, according to their agreement, or if none, to their income, and if this is not sufficient, in proportion to their property; the wife cannot dispose of the real property or real rights without the express consent of the husband, or of the judge if the former unreasonably objects, any stipulation to the contrary being void. The rules of the legal partnership in regard to property jointly acquired during marriage, without designation of portions, apply until partition, after which each party will hold his own portion exclusively. Debts contracted before marriage will be paid by the debtor; those contracted during marriage will be paid by both parties if they are jointly bound, otherwise each will pay his own. If the wife left the enjoyment of her property to her husband, he is not liable for the income used by him, but any on hand at the time of dissolution belongs to the wife. Separation of property by agreement may take place upon voluntary divorce, or for other grave cause declared sufficient by the judge upon hearing the Ministerio Público; in the former case the provisions applicable to administration and dissolution of the legal partnership will be observed unless otherwise provided in the capitulations. (Arts. 2072–2086.)

Art. 192. Judicial Sentence — Incidents.— Separation of property by judicial sentence takes place in cases of involuntary divorce, by forfeiture of family rights by one party under the Penal Code, and in cases of absence, the general provisions applicable to such cases being observed. Where

a penalty imposed on the husband disqualifies him from personally administering the property, the wife will administer her own and the joint property, and that of the husband if he does not appoint an attorney; in case the wife administers, she will have the same powers and liability as the husband, but she cannot, without judicial license, encumber or convey the real estate under her control. Separation of property does not prejudice rights previously acquired by creditors, nor will resumption of the conjugal relations affect contracts made during the separation. The petition for separation and the final decree must be registered in the public register. (Arts. 2087-2097.)

CHAPTER 11.

ANTENUPTIAL AND POSTNUPTIAL GIFTS.

Art. 193. Ante-nuptial Gifts — Incidents.

194. Gifts between Husband and Wife.

Art. 193. Antenuptial Gifts — Incidents.—Antenuptial gifts are those made before marriage by one spouse to the other, or by a third person to one or both of them in consideration of the marriage; such gifts, whether by the parties or third person, and whether made at one time or different times, cannot exceed one-sixth of the donor's property, otherwise the excess is inofficious. To determine whether such gift is excessive, the donee or his heirs may make the calculation as of the time the gift was made, if an inventory of the donor's property was then made, or as of the time of death. An express acceptance of the gift is not required. The gift is not revoked by subsequent birth of children to the donor, nor by ingratitude, but is revoked by the adultery or unjustified abandonment of the conjugal home by the donee, where the other spouse is the donor. Minors can only make such donations with the intervention of their parents or guardians

and with the approval of the judge. If the marriage does not take place, the donation is ineffective; if the marriage is declared void, the donation remains effective in favor of the party or parties who acted in good faith; if the donee spouse acted in bad faith, the gift goes to the children, or if none, will be returned to the donor; if both acted in bad faith, the gift is ineffective, unless they have children, who will receive it. The general rules applicable to donations govern antenuptial donations except as herein provided. (Arts. 2098–2113.)

Art. 194. Gifts between Husband and Wife.—Husband and wife may make gifts to each other while living or by last will, but they are confirmed only by the death of the donor, and on condition that they are not contrary to the marriage capitulations, and do not prejudice the right of ascendants and descendants to aliments; they may be freely revoked at any time by the donor, either expressly or by acts showing necessarily that intention. The wife does not require marital or judicial authorization for the purpose. These donations are not annulled by subsequent birth of children, but will be reduced as in the case of ordinary donations. (Arts. 2114–2118.)

CHAPTER 12.

DOWRY.

Art. 195. Definition — Incidents.

Art. 195. Definition — Incidents.—Dowry is any thing or amount given by the wife, or by another in her name, to the husband for the purpose of aiding him to bear the burdens of marriage; it may be constituted before or during marriage, and may be increased during marriage, but such increase is only effective as dowry after it is registered; the

general rules concerning marriage capitulations apply to dowry. Minors of either sex cannot constitute a dowry unless they are emancipated and have the consent of the person who emancipated them or of the judge; a minor wife requires the consent of the persons whose consent she requires to contract marriage, and if already married, the approval of the judge. The dowry may be constituted with the real and personal property which the wife possessed before marriage, and be increased with that acquired during marriage. (Arts. 2119-2125.)

The details of the constitution, administration and restitution of dowry, and of dowry actions, are omitted. (Arts. 2126-2218.)

TITLE V.

ILLEGAL MARRIAGES AND DIVORCE.

CHAPTER 1.

VOID AND ILLEGAL MARRIAGES.

Art. 196. Nullity — By Whom and When Pleaded.

197. Same — Effects of Nullity.

Art. 196. Nullity — By Whom and When Pleaded.— Marriages are voidable: 1, Where any of the impediments stated in clauses 1, 3 and 9 of Art. 171 existed, or the consent of the person exercising the *patria potestad* was not had; 2, where celebrated in contravention of any of the requirements stated in Arts. 173 and 175 in regard to publications at the present or former domiciles, witnesses, or other ceremonies therein prescribed, previous to or at the time of marriage; 3, where there is incurable impotency for copulation, existing before marriage and legally proved. Want of legal age in male and female ceases to be ground of nullity when there are children born, or where upon becom-

ing twenty-one years of age neither party sues to annul the marriage. Nullity for want of consent can only be alleged by the ascendant who had the right to give it, and within thirty days after having knowledge of the marriage, and is waived by any act of express or tacit consent done within the thirty days.

Consanguinous relationship not dispensated annuls the marriage, but if dispensation is afterwards obtained and both parties, with knowledge of the nullity, voluntarily wish to reiterate their consent, by means of an act before the judge of the civil register, the marriage is revalidated as of the day it was originally contracted; the action of nullity for this cause may be brought by either party or their ascendants, or may be prosecuted *ex officio*. Mistaken identity only annuls a marriage where one of the parties marries the other believing he is some one else; the action can only be brought by the party deceived, and if the mistake is not denounced immediately upon its discovery, the marriage is ratified and binding unless some other impediment exists. Fear and violence are causes of nullity, where they threaten the life, honor, liberty, health or considerable part of the property, and are caused or done to the party or to the person under whose *patria potestad* he was at the time of the marriage, and were still effective at such time. Suit for nullity can only be brought by the injured person and within sixty days after the marriage. (Arts. 257-267.)

Art. 197. Same — Effects of Nullity.—An existing marriage annuls a second one though made in good faith believing that the other party to the first is dead; the action of nullity may be brought by the party to the first marriage, his children and heirs, or by either party to the second; if none of them brings action, the judge may proceed *ex officio* or at the instance of the Ministerio Público. The action under clause 6 of Art. 171 may be brought by the innocent party, his or her children or heirs, or by the Ministerio Púb-

lico; nullity for want of essential formalities may be alleged by the parties or by any one interested in proving no marriage, also by the judge *ex officio* or at the instance of the Ministerio Público; but the parties may not plead nullity for want of formality against an act of marriage celebrated before the judge of the civil register, followed by the assumption of the marriage relation. Suit for nullity on account of incurable insanity or impotence can only be brought by the parties or by the guardian of the incapacitated party.

Marriage once contracted is presumed valid and can only be considered void when so declared by a final judgment; nullity cannot be the subject of compromise between the parties nor of arbitration; the Ministerio Público must be heard in suits of nullity; only those expressly authorized may bring the suit, which is not transmissible, but heirs of a party may continue a suit already begun. Upon final judgment of nullity, the judge must send a certified copy to the judge of the civil register where the marriage occurred, who will make on the margin of the record a detailed entry of the contents of the judgment, its date, the court which rendered it, and the number of the copy, which will be filed of record. A marriage contracted in good faith, although declared void, is effective while it continues, as between the parties, and at all times as to children born before or during its continuance and within three hundred days after the judgment of nullity; if only one of the parties acted in good faith, the marriage will be given civil effect only as to such party and the children; good faith is presumed until clear proof to the contrary. Where the suit is begun by one of the parties, the provisional measures prescribed in Art. 200 will be decreed at once, and if the wife is pregnant when final judgment is rendered, the proper dispositions will be made for her.

Upon final judgment rendered, male children over three years old will remain in custody of the father, and female children with the mother, if both parties acted in good faith;

if only one so acted, all the children will remain in his or her custody, except that all children under three years old must be left with the mother until that age. The husband must render accounts of his administration of the property as provided in the marriage contract or in the Code. The wife cannot remarry until after three hundred days from the dissolution of the former marriage, which time, in cases of nullity, may be counted from the cessation of cohabitation. A marriage is illegal, but not void: when made pending the granting of a dispensation, or before the consent of the guardian or judge is given, or accounts in case of wardship approved, or when made within the three hundred days after dissolution of the former marriage; such violations will be punished under the Penal Code. (Arts. 268-289.)

CHAPTER 2.

DIVORCE.

- Art. 198. Defined — Legal Grounds.
199. Proceedings for Divorce.
200. Same — Effects of Divorce.

Art. 198. Defined — Legal Grounds.— Divorce does not dissolve the bonds of matrimony, but only suspends certain civil obligations as herein expressed. Legal causes of divorce are: 1, Adultery of the husband or wife; that of the wife is always cause for divorce, but that of the husband only where the offense was committed in the conjugal home, or the guilty parties have established a concubinage, or the husband causes a scandal or public insult to the lawful wife, or the latter has been mistreated by word or deed by the adulteress or on account of her; 2, that the woman gives birth during marriage to a child conceived before, and which is judicially declared illegitimate; 3, where the husband proposes to prostitute his wife, or accepts money or other remuneration

for that purpose; 4, instigation of one party to the other to commit any crime; 5, the attempt by either to corrupt their children, whether of both or either parent, or permitting their corruption, but such tolerance must be by positive acts and not mere omission; 6, the abandonment of the conjugal home without just cause, or where with just cause sufficient to authorize a divorce, the absentee remains away one year without suing for divorce; 7, extreme cruelty, threats or grave abuse by husband or wife to the other; 8, false accusations made by one against the other; 9, refusal of either party to provide support according to law; 10, incorrigible vices of gambling or drunkenness; 11, a chronic and incurable disease which is contagious or hereditary, had before marriage by one party without the knowledge of the other; 12, violation of the matrimonial capitulations; 13, mutual consent. Unfounded accusations made by one party against the other in an action for divorce or annulment of marriage, or in other legal proceeding, entitles the latter to sue for divorce, but only upon the lapse of four months after notification of the final judgment, during which time the wife need not live with the husband. (Arts. 226-230.)

Art. 199. Proceedings for Divorce.—Although both parties agree upon divorce from bed and board, they cannot obtain it without written petition to the judge as herein provided, accompanying their petition with an agreement making provision for their children and the management of their property during the separation, which cannot be sued for within two years after the marriage. Upon presentation of the petition, the judge will cite the parties to a meeting in which he will seek to effect reconciliation, failing in which he will approve the provisional agreement or make such modifications as, upon hearing the Ministerio Público, he may deem proper, considering the rights of the children and of third persons. Upon the request of either party after one month from the

first meeting, the judge may cite them to another and renew his efforts for a reconciliation, failing in which and it appearing that the parties wish it, he will decree the separation, and order that the aforesaid agreement be reduced to *escritura pública*; the decree of separation will fix the time that the separation is to continue as agreed by the parties. Like proceedings will be had where at the end of such separation the parties insist upon divorce; but the parties may at any time become reconciled by consent; reconciliation is presumed where cohabitation is resumed at any time; it puts an end to any pending proceedings and vacates the decree already rendered; the parties should notify the judge, but failure to do so does not affect the reconciliation. Insanity, disease or any like calamity, except as provided in clause 11 of the preceeding Article, does not authorize divorce, but the judge, for good cause at the instance of one of the parties, may decree temporary suspension of cohabitation, leaving all other obligations unaffected; nor can any of the foregoing causes for divorce be alleged after pardon or condonation, express or tacit. (Arts. 231-238, 240-242.)

Art. 200. Same — Effects of Divorce.—Divorce can only be demanded by the innocent party and within one year after having knowledge of the facts on which the suit is founded; such innocent party may even after final decree compel the other party to resume the marriage relation, but in such case the former cannot again seek divorce for the same acts, but may if new acts of the same kind are repeated. Upon suit being admitted, or before, if necessary, and only during its pendency, the following provisional dispositions will be adopted: 1, Separation of the husband and wife in all cases; 2, where the wife is alleged to have given cause for the divorce, and the husband so requests, she will be deposited in the house of some decent person, designated by the judge; but where the wife is not presumably at fault she will not be so deposited except at her own request; 3, the children will

be placed in custody of one or both of the parties, as hereafter provided; 4, provision will be ordered for support for the wife and the children who do not remain with the father; 5, proper steps will be taken so that the husband as manager of the property may not prejudice the rights of the wife; 6, in proper cases the precautionary measures prescribed for pregnant women will be ordered. Upon final decree being rendered, the children will be awarded into the *patria potestad* of the innocent party, or if neither is innocent, and there is no ascendant to exercise the *patria potestad*, a guardian will be appointed according to law, or the court may, at the request of other relatives, make such other disposition of minor children as may be for their best interest. Although the parents may lose the *patria potestad* over the children, they remain bound to all obligations toward them.

The party at fault shall lose all power and rights over the person and property of the children so long as the innocent party lives, except where the divorce is granted because of sickness, but will recover such rights upon the latter's death where the divorce was granted on the grounds stated in clauses 7, 8 and 12 of Art. 198; in all other cases a guardian will be appointed upon the death of the innocent party where there is no ascendant to exercise the *patria potestad*. The party at fault will lose everything received or promised by the other or by another for him, while the innocent party keeps everything received and may enforce all agreements made; if the wife is innocent, she is entitled to aliments as long as she lives honestly, although she has means of her own; if she is at fault, the husband retains management of the common property, and must support the wife, unless the divorce was for cause of her adultery. Upon final decree each party is restored to his or her own property, and the woman is competent to contract and litigate in respect to hers without marital license, if she is an innocent party. Death of either party pending suit for divorce puts an end to the suit, and

the heirs of the deceased have the same rights and obligations as if there had been no suit.

Hearing of all divorce suits shall be secret and the Ministerio Público shall be a party; upon final judgment, the judge of first instance shall forward a copy of the decree to the judge of the civil status, who will enter on the margin of the act of marriage a note of the divorce, stating its date and the tribunal which decreed it. (Arts. 239, 243-256.)

TITLE VI.

PATERNITY AND FILIATION.

CHAPTER 1.

LEGITIMATE CHILDREN.

Art. 201. Presumptions of Legitimacy.

202. Time and Manner of Contesting Legitimacy.

203. Birth — What so Considered.

Art. 201. Presumptions of Legitimacy.—Children born after one hundred and eighty days after the marriage, and those born within three hundred days after the dissolution of a marriage by decree of nullity or by death, are presumed in law legitimate, and no proof is admissible against such presumption but that of physical impossibility of the husband to have access to his wife within the first one hundred and twenty days of the three hundred preceding the birth; nor can the husband disown a child by alleging the adultery of its mother, although she declares it illegitimate, unless its birth was concealed from him, or occurred during an absence of more than ten months. The husband may disclaim a child born more than three hundred days after final or provisional separation, but the wife, the child or its guardian may maintain its legitimacy; but the husband cannot disclaim the legitimacy of a child born within one hundred and eighty days

after marriage: if it is proven, by some sort of written proof, that before marriage he knew that the woman was pregnant; that he was present at the recording of the birth and signed the record, or it shows that he could not sign; if he has expressly recognized the child as his; or if the child was born incapable of living. If a widow remarries within three hundred days after the dissolution of the former marriage, the filiation of a child born after the second marriage will be determined by the following rules: 1, The child is presumed to be that of the first husband if born within the two hundred and ten days after his death, and anyone denying its legitimacy must fully prove the impossibility of its being the child of the deceased; 2, if born more than two hundred and ten days after the remarriage it is presumed to be the child of the second husband; 3, it is presumed natural if born more than two hundred and ten days after the death of the first husband and before two hundred and ten days after the second marriage. (Arts. 290-294, 300.)

Art. 202. Time and Manner of Contesting Legitimacy.—Questions regarding the legitimacy of a child born more than three hundred days after the dissolution of the marriage may be raised at any time by any person concerned; where a husband has the right to contradict the legitimacy, he must begin the action within sixty days after the birth, if he was present, or from his return if he were absent, or after discovery of the fraud if the birth was concealed from him; if he is under guardianship for any mental disability, the action may be brought by his guardian, and if he fails to sue, the husband may do so within like time after the removal of the disability; if the husband dies without recovering reason, his heirs may exercise the same rights he had, but cannot, except in such event, contradict the legitimacy of a child born within one hundred and eighty days after marriage if he had not begun the action; in other cases where the husband dies without action, the heirs may begin the suit within sixty days

after the child has been put into possession of the father's property or troubles them in their possession of the inheritance.

The disowning of a child by the husband or his heirs must be by a formal suit before a competent judge, otherwise every act of disowning is void; the mother and the child, for whom, if a minor, a guardian *ad litem* will be appointed, must be heard in the suit; neither compromise nor arbitration is admissible in regard to legitimacy, but parents may nevertheless recognize their children, and children of legal age may consent to such recognition; and pecuniary rights arising from filiation may be compromised or arbitrated, without affecting the acquisition of status. (Arts. 295–299, 301–302, 305–307.)

Art. 203. Birth — What so Considered.— For legal effects the foetus is only considered born which is entirely separated from the maternal womb, and is born with human figure, and which either lives twenty-four natural hours, or is presented alive to the civil register; in default of any of these requisites, no action of legitimacy can be brought by any one at any time. (Arts. 303–304.)

CHAPTER 2.

PROOFS OF FILIATION OF LEGITIMATE CHILDREN.

Art. 204. Birth Records — Recognition.

205. Actions — Prescription.

Art. 204. Birth Records — Recognition.— The fact of being a legitimate child is proven by the birth record, or where the record is wanting or destroyed, by the constant possession of such status; but where the validity of the marriage of the parents is disputed, the marriage record must be produced, except that where both parents, who have

lived publicly as husband and wife, have died or from sickness or absence were unable to declare the place of their marriage, the legitimacy of their children cannot be denied from the mere failure to produce such record, if their legitimacy is proven by the constant possession of the status of legitimate children, uncontradicted by the record of their birth. The possession of such status is proven by the constant recognition of one as the legitimate child of another by the latter's family and in society, provided that the child has either constantly used the name of the putative father with his consent, or that the father has treated him as his legitimate son, providing for his maintenance and education. Where the birth record concurs with the possession of such status, no action lies against it unless the marriage is declared void by reason of bad faith of both parties; if the birth record is judicially declared false or the names of the parents are omitted in it, filiation may be established by the ordinary modes of proof at law; certified copy of judgment declaring filiation must be sent to the judge of civil status, who will record it with the same effect as other birth records. (Arts. 308-312.)

Art. 205. Actions — Prescription.— Civil actions brought against one for property acquired while claiming the status of a legitimate child afterwards disproven, are governed by the ordinary rules of prescription; action by the child or his legitimate descendants to establish his legitimacy does not prescribe; his other heirs may bring such action, if the child died before reaching twenty-four years or became insane before twenty-five and died in that condition. The heirs may also continue the action brought by the child unless he formally withdrew it or took no step in it during a year since the last procedure; they may also defend any action brought to contest the legitimacy; creditors, legatees and donees have the same rights where the child did not leave sufficient property to pay them; such actions prescribe in four years after

his death. In any action brought to contest legitimacy during a child's minority, the judge will appoint a guardian *ad litem* to defend him, and the mother will be heard. The possession of legitimate filiation can be lost only by final judgment in ordinary suit, in which all recourses allowed by law are available; nor can the status be acquired by any one not possessing it except as provided in the preceding Article. Any one in possession of the rights of legitimate father or child, who is molested in their exercise without judgment declaring them lost, may have recourse to the proper legal actions to protect himself in their possession. Proof of filiation is not alone sufficient to establish legitimacy, which is also subject to the rules in regard to the validity of marriage and to those in Articles 201 to 203. (Arts. 313-324.)

CHAPTER 3.

LEGITIMATION.

Art. 206. Legitimation — Incidents

Art. 206. Legitimation — Incidents.— Only natural children can be legitimated, and only by the subsequent marriage of their parents, which is effective although between it and the birth of the children there was another marriage; such subsequent marriage legitimates the children, although it is afterwards declared void, provided that at least one of the parties acted in good faith at the time of celebrating it. A natural child is one conceived out of wedlock at a time when the parents could be married, although only with dispensation. To legitimate such child both parents, together or separately, must expressly acknowledge him, before, at the time of, or during the marriage; but express recognition by the mother is not required where he was acknowledged by the father before the marriage and the mother's name appears in the birth record, nor is acknowl-

edgment by the father necessary where his name appears in the birth record. Legitimated children have the same rights as legitimate ones, and acquire them from the day of their parents' marriage, although not acknowledged until afterwards; children leaving descendants may be legitimated although they are dead at the time of the marriage; unborn children may also be legitimated, if the father upon marriage declares that he acknowledges the child of which the wife is or may be pregnant. Legitimation of a child operates in favor of his descendants. (Arts. 325-335.)

CHAPTER 4.

ACKNOWLEDGMENT AND DESIGNATION OF CHILDREN.

Art. 207. How Acknowledged — Effects.

208. Same — Actions.

Art. 207. How Acknowledged — Effects.— Only a parent who is one year older than necessary to contract marriage can acknowledge his or her natural children; both parents may make the acknowledgment jointly; for acknowledgment by only one parent it is sufficient that he or she was free to marry on any of the first one hundred and twenty days of the three hundred preceding the birth, the law presuming in such case that the child is natural. The acknowledgment is only effective as respects the parent making it, and can only be legally made: 1, In the birth record before the judge of civil status; 2, by a special record before the same judge; 3, by *escritura pública*; 4, by will; 5, by express judicial confession. Where either parent alone acknowledges the child, the record must not reveal the name of the other, nor any indication by which he may be known, and any words to that effect will be entirely erased, under penalty for any infraction of a fine from \$20 to \$100 against the judge or official responsible therefor. It is absolutely prohibited to investigate the parent-

age of such children, except in case of violation; the child alone has the right to inquire into its maternity in order to secure acknowledgment by the mother, but only in the event that he has the status of being her natural child, and that she is not married at the time the claim is made; the possession of status, for this purpose, is established by proof in the ordinary way that the putative mother cared for the raising and education of the child and recognized and treated it as her own. The obligation contracted to provide support is neither proof nor presumption of parentage, and cannot be alleged as a ground for its investigation. (Arts. 336-347.)

Art. 208. Same — Actions.— An acknowledgment may be contradicted by an interested third person after the death of the parent who made it. If the mother contradicts the acknowledgment made by a man of a child whom, with its consent, she acknowledges as hers, such contradiction alone invalidates the acknowledgment, in which case the child loses all rights conferred by such acknowledgment. A child of lawful age cannot be recognized without his consent, nor a minor without that of his guardian, if any, or of one specially appointed by the judge for the purpose; such minor may bring suit to vacate the acknowledgment upon becoming of age, the suit to be begun within four years from majority if he previously knew of the recognition, if not, within four years after he learns of it. A child not yet born may be acknowledged; also one after his death if he has left descendants. An acknowledgment once made cannot be revoked by the maker, and if made in a will which is revoked, the acknowledgment is not affected; a minor may revoke an acknowledgment made by him upon proving that he was deceived in making it, the action being brought within four years after becoming of age.

A child acknowledged by either or both parents has the right to bear the name of and be supported by the parent who acknowledges him, and to receive the portion of interes-

tate inheritance and support prescribed by law; if afterwards by final judgment he is decreed to be born of an adulterous or incestuous marriage not dispensable, he is only entitled to the rights of a spurious child. In cases of rape or violation about the time of conception, the courts may at the instance of the parties, by suit begun in their lifetime, determine the paternity, or if the parents die during the minority of the children, the latter may bring such action within four years after their majority or emancipation. (Arts. 348-360.)

CHAPTER 5.

PATRIA POTESTAD.

Art. 209. Minority — Incidents.

210. Effects on Property Rights.

211. Termination and Suspension.

Art. 209. Minority — Incidents.—Persons of both sexes under twenty-one years of age are minors. Children of whatever age, status and condition must honor and respect their parents and other ascendants. Unemancipated minors are under the *patria potestad* so long as any ascendant entitled by law to exercise it is alive; the right is exercised over the persons and property of legitimate and legitimated or acknowledged natural children, by the ascendants in the following order: 1, Father; 2, mother; 3, paternal grandfather; 4, maternal grandfather; 5, paternal grandmother; 6, maternal grandmother; only in case of death, interdiction, absence or renouncement of one with a prior right can the next in order exercise the right. While a child is under the *patria potestad* he cannot leave the house of the person exercising it without his permission or by decree of the proper public authority; such person is bound to properly educate the child, and has the right to reasonably

correct and punish it, being assisted if necessary by the public authorities in the prudent exercise of this and other powers. The minor subject to the *patria potestad* cannot appear in court or make any contract without the express consent of the person under whose power he is. (Arts. 362-373.)

Art 210. Effects on Property Rights.—The person exercising the *patria potestad* is the lawful representative of the minor subject to it and the legal administrator of his property, as provided in the Code; such property, while the disability continues, is divided into six classes, derived: 1, Gifts from the father; 2, inheritance or legacy from the father; 3, gifts, inheritance or legacy from the mother or grandparents; 4, gifts, inheritance or legacy from collateral relatives or strangers; 5, gifts of fortune; 6, property acquired by the child through any honest work. In the first class, the property belongs to the child and the administration to the father, who may grant the administration to the former, together with any part of its products, and if he does not designate any part, the child shall have one-half; in the second, third, fourth and fifth class, the property and one-half the usufruct belong always to the child, and the administration and other half to the person under whose *patria potestad* he is, unless the latter concedes either or both to the child; in the sixth class, the property, administration and usufruct belong entirely to the child. Rents or income accrued on the child's property before the father takes possession, belong to the child and are part of his capital, and are not products which the father may appropriate. Where by law or the permission of his father, the administration of the property is left to the child, he is considered emancipated in respect to its administration, subject to the restrictions imposed by law. The usufruct of the property imposes on the father the obligation of providing aliments and all the liabilities of an usufructuary, except that of giving bond; he cannot alienate or encumber the real estate except in case of

absolute necessity or evident advantage, and with previous order of court. The right of usufruct is extinguished by emancipation, majority or renouncement, and by the loss of the *patria potestad*; renouncement in favor of the child is considered a donation. Parents are not bound to render account of their management except in regard to property of which they are bare administrators; they must restore to their children at once upon their majority or emancipation, all their property and its products; in all cases where the father has an interest opposed to that of the minor, the latter must be represented in all matters in and out of court by a guardian appointed by the judge for each case. (Arts. 374–387.)

Art. 211. Termination and Suspension.—The *patria potestad* is terminated by the death of the person exercising it where none is left to assume it, and by the emancipation or majority of the minor; it is lost, when the person exercising it is convicted of any offense involving loss of the right, and by the guilty party to a divorce; ¹ the courts may deprive the person exercising it of the right, or restrict its exercise, in cases of abuse, neglect or vice. The right is suspended by judicially declared incapacity, as in the next Article, by formal decree of absence, or by judgment imposing suspension as a penalty; where suspended by reason of insanity, the parents retain their rights of usufruct in the minor's property. The father may in his will appoint one or more consultors for the mother or grandmother, who must hear their opinion in the matters expressly indicated, and if they do not, they may be deprived of all rights over the minors at the instance of the consultors and hearing of the Ministerio Público; but such right of appointment is lost if the father is not at the time of his death in the exercise of the *patria potestad*, unless suspended because of absence or insanity, and the will was made before the declaration of absence or the mental derangement. The

¹ See Art. 200.

mother and grandparents may renounce their right to the *patria potestad* or its exercise, which will then pass to the next in order, and if none, a guardian will be appointed according to law; the right once renounced cannot be recovered. A female ascendant who remarries, lives immorally, or gives birth to an illegitimate child, loses all rights of *patria potestad*, and if there is no successor, a guardian will be appointed, who cannot be the second husband; upon becoming again widowed the rights lost by remarrying are recovered. (Arts. 388–402.)

TITLE VII.

GUARDIANSHIP AND DISABILITIES.¹

CHAPTER 1.

GUARDIANSHIP.

Art. 212. Who Subject to — General Rules.

213. Interdiction — Void Acts.

214. Extinction of Disability — Emancipation.

Art. 212. Who Subject to — General Rules.— Guardianship is intended for the care of the person and property of persons under disability, either natural or legal; the following are under both incapacities: 1, Unemancipated minors; 2, those deprived of intelligence through insanity, idiocy or imbecility, although they have lucid intervals; 3, deaf-mutes who cannot read or write; minors unemancipated are under legal disability for judicial matters. The guardian must act in conjunction with the curator; no one can have more

¹ Omission is made of the detailed provisions of several chapters on the subjects of Testamentary Guardianship; Legal Guardianship of Minors, Insane, and others under Disability; Of Persons who Cannot Act as Guardians, Excuses, Guardianship Bonds, Performance of Duties of Guardianship, Guardianship Accounts, Delivery of Property, and Curators.

than one guardian and one curator, who cannot be the same person, but they may act for several wards; the guardian and curator must not be related in any degree in the direct line nor within the fourth degree collaterally; the charge is personal and cannot be refused without legal cause; the charge of guardian may be conferred by will, by election of the minor confirmed by the judge, by appointment of the judge, or by law; the guardianship continues as long as the incapacity, which is terminated only by death or by final judicial sentence rendered in proceedings conducted as in cases of interdiction. (Arts. 403-419.)

Art. 213. Interdiction — Void Acts.— All acts of administration done or contracts made by minors and others subject to interdiction, before the appointment of a guardian, although *ad interim*, where the minority or state of interdiction was patent and notorious at the time of the act or contract, are void; also all such acts and contracts of minors and others under disability, after the appointment of the guardian, unless authorized by the latter, and all those of emancipated minors which are contrary to the legal restrictions. The nullity of such acts and contracts can only be pleaded, either as a ground of action or defense, by the person under disability or in his name by his lawful representative, but not by the persons with whom they contracted, nor by their sureties or those jointly liable. Actions for nullity prescribe in the same manner as real or personal actions, according to the nature of the act claimed to be void. Minors cannot plead the nullity of their acts in respect of obligations contracted in regard to matters connected with the profession or art in which they are experts, nor where they have presented false certificates of the civil registry or made false representations to induce belief that they are of legal age. (Arts. 420-427.)

Art. 214. Extinction of Disability — Emancipation. —

Guardianship is extinguished: 1, By the death, declared absence, removal or supervening excuse or impediment of the guardian; 2, by the death, cessation of impediment, or emancipation of the person under disability, subject, in the latter instance, to the restrictions below stated.

A minor becomes legally emancipated upon marriage, and does not come again under the *patria potestad* although the marriage is dissolved by death. If over eighteen years of age, a minor may be emancipated by the person under whose *patria potestad* he is, with the consent of the minor and the approval of the judge; the act of emancipation must be by *escritura pública*; once made the emancipation cannot be revoked. The emancipated minor has the right to freely administer his property, but during minority he requires: 1, The consent of the person who emancipated him, in order to contract marriage before majority, or if such person is dead or under disability, the consent of the ascendant next in order or of the judge; 2, judicial authorization in order to convey, encumber or mortgage his real estate; 3, a guardian for judicial business. Minors over eighteen years of age under guardianship, who give evidence of ability to administer their property and of their good conduct, may be habilitated of age by judicial decree, but only for the purposes of administering their property and litigation; a copy of such decree will be sent to the judge of civil status to be registered according to law.

Majority begins upon completing twenty-one years, and the person attaining majority may freely dispose of his person and property; but a woman under thirty years of age cannot leave the parental home without the consent of her father or mother, with whom she is living, except to marry, or when the father or mother has remarried. (Arts. 563, 590-597.)

CHAPTER 2.

ABSENTEES AND UNKNOWN PERSONS.

Art. 215. Absentees — Provisional Measures.

216. Representative of Absentee — Duties.

217. When and How Declared.

Art. 215. Absentees — Provisional Measures.— One who is absent from the place of his ordinary residence, but who has a duly authorized attorney in fact appointed before or after departure, is considered as present for all civil effects and his affairs may be conducted with the attorney so far as his powers extend. Where the person has disappeared, and his whereabouts and his representative are unknown, the judge, at the instance of a party or *ex officio*, will appoint a receiver (*depositario*) for his property, with the same powers and duties as judicial receivers; will cite him by edicts published in the principal newspapers of the Republic to appear within a term of not less than three or more than six months, and will make the orders necessary to secure his property; a copy of the edicts will be forwarded to the Mexican consuls abroad to be given publicity as best they may. If the absentee has minor children under his *patria potestad*, and there is no ascendant to exercise it nor guardian, the Ministerio Público will request the appointment of a guardian.

At the expiration of the time fixed in the edicts, if the absentee does not appear in person or by attorney, nor by guardian or relative having the right to represent him, or where a power granted by the absentee expires or is insufficient, the Ministerio Público, or any other person having an interest to deal with, sue or defend the absentee, may apply for the appointment of a representative and a receiver. (Arts. 598–605.)

Art. 216. Representative of Absentee — Duties.— An absentee husband or wife will be represented by the other spouse, ascendants by descendants, and the latter by the former; if the absentee spouse was previously married and has children of the former marriage, the judge will order that the present spouse and such children agree upon a representative, and if they do not agree will himself make the appointment; if there are no such persons, the presumptive heir will be the representative, and if there are several with equal rights they will select one as representative, and if they cannot agree the judge will appoint, preferring the one having the greatest interest in the preservation of the absentee's property.

The representative of the absentee is the lawful administrator of his property, and is subject to the same duties, powers and other incidents as a guardian, but one who cannot be a guardian, except the wife or mother, cannot act as representative. The functions of the representative are terminated by the return or by the death of the absentee, by the appearance of a lawful attorney, and by provisional possession. Every year, on the anniversary of his appointment, the representative must cause the publication of new edicts calling the absentee, stating therein the name and residence of the representative, and the number of years yet uncompleted of the five- and ten-year periods mentioned in the next Article, such edicts to be published for three months, at intervals of fifteen days, in the principal newspapers in the country, and copies to be sent to the Mexican consuls abroad; failure to comply with this requirement renders the representative liable for all damages caused the absentee, and is ground of removal. (Arts. 606–617.)

Art. 217. When and How Declared.— An action to declare absence lies after five years from the appointment of the representative, or, when the absentee has left a general attorney for the administration of his property, after ten years,

counted from the time of disappearance, if not since heard from, or from the last tidings had from the absentee, and although the power of attorney was given for more than ten years. After five years, the parties interested, as below mentioned, and the Ministerio Público, may ask an order on the attorney to give bond, as in the case of guardians, and the judge will so order if cause is shown. The declaration of absence may be requested by the heirs-at-law or testamentary heirs named in an open will, by any one having any right or obligation dependent upon the life, death or presence of the absentee, or by the Ministerio Público; if the petition seems well founded, the judge will order publication in the official newspapers and others which he may name, in the same way as in the preceding Article, and if no news is had from the absentee within six months from the last publication, or no opposition made, the judge will then, but no sooner, make a formal declaration of absence; but if any news is had or opposition made, the absence will not be declared until the publication is repeated in the same manner, and such investigations made as may be suggested by the objector or deemed advisable by the judge. The declaration of absence must be published three times at intervals of fifteen days, in the newspapers, and copies sent to the consuls, as above provided, and such publications will be repeated every five years until the presumption of death is declared. The judgment of declaration of absence is subject to the same procedure as prescribed in the Code of Civil Procedure for suits of major interest. (Arts. 618-628.)

CHAPTER 3.

EFFECTS OF DECLARATION OF ABSENCE.

Art. 218. Administration on Property — Bonds.

219. Same — Conditional Rights.

Art. 218. Administration on Property — Bonds.— Upon the declaration of absence being made, if there is a closed will, the person in whose possession it is will present it to the judge within fifteen days after the last publication, and the judge will open the same after citation to the parties at whose instance the declaration was made, and in the presence of the representative, with the solemnities required by law, and will put the testamentary or legal heirs into provisional possession of the property, upon their giving bonds to secure the administration of the property (following the usual proceedings in cases of administration of property of deceased persons, the details of which as here given are omitted); all persons having rights or obligations with the absentee dependent upon his death, may exercise such rights or suspend performance of such obligations, upon giving like bond. If no heirs present themselves, the Ministerio Público may request that the representative, or another one to be selected, enter into provisional possession of the property on behalf of the public treasury. If the person taking provisional possession dies, his heirs succeed to his interest under the same conditions and similar bonds. Should the absentee return or make proof of his existence before the presumption of his death is declared, he shall recover his property, less one-half of its products and income, which will be retained by those who have had provisional possession. (Arts. 629–647.)

Art. 219. Same — Conditional Rights.— Anyone claiming a right in respect to a person whose existence is not acknowl-

edged, must prove that such person was alive at the time when his existence was necessary in order to acquire the right. In respect to an inheritance to which the declared absentee may be entitled, only those who would be his coheirs or take in his default can enter upon it, making a formal inventory of the property received; in such case such parties will be considered as provisional or definitive possessors of the inheritance according to the time at which the absentee became entitled to it, but without prejudice to the rights which the absentee, his representatives, creditors or legatees may have, and which are only extinguished by prescription; until such rights are exercised or the absentee appears, the persons taking possession of the inheritance are entitled to retain the products received in good faith. (Arts. 669-673.)

CHAPTER 4.

MARRIED ABSENTEE.

Art. 220. Married Absentees — Administration.

Art. 220. Married Absentees — Administration.— The declaration of absence does not dissolve the bonds of matrimony, but interrupts the conjugal partnership, except as below stated. After citation of the legal heirs, an inventory of the property will be made, and the separation of property made in accordance with the matrimonial capitulations; the spouse present will at once receive his or her individual property and share of the *gananciales* accruing up to the day of the final judgment of absence, of which he or she may freely dispose; the share of the absentee will be delivered to his heirs as above provided.¹ If the spouse present enters into provisional possession as an heir, he or she is entitled to the products and income of the property administered, but if not an heir, nor possessed of individual property or *gananciales*, the conjugal partnership will continue if so stipulated in

² See Art. 218.

the capitulations, and an interventor may be appointed; if there was no legal partnership, such spouse is entitled to aliments; if there was a partnership, he or she is entitled to one-half the profits, in addition to the aliments, which the judge will order after hearing the heirs.

If the declared absentee should return, the conjugal partnership will be restored, but the *gananciales* acquired will belong to the party who acquired them; if it is proven that the absentee died before the declaration of absence, the *gananciales* will be common only up to the date of death, the balance being returned to the heirs. If during the absence of one spouse the other should become absent, the property of the latter will be administered as in the preceding chapter; if both should disappear at the same time, their property will be separated as provided in this chapter, and be delivered to their respective heirs as in the preceding chapter provided. (Arts. 648-658.)

CHAPTER 5.

PRESUMPTION OF DEATH OF ABSENTEE.

Art. 221. When Declared — Effects.

222. Miscellaneous Provisions.

Art. 221. When Declared — Effects.— After the expiration of thirty years from the declaration of absence, the judge, at the instance of the interested parties, will declare the presumption of death. Thereupon the will of the absentee, if not previously opened, will be opened; the provisional possessors will give account of their administration, and the heirs and other interested parties will enter into definitive possession of the property without security, and any previously given will be cancelled. If the death of the absentee should be proven, only those who would have inherited at the time of the death will be entitled to the inheritance,

but those in possession of the property may retain, upon surrendering it, one-half the products for the time they held it provisionally, and all the products since the time they obtained definitive possession. If the absentee appears or proves his existence, after definitive possession was awarded, he will recover his property in its present condition, and the price of any of it which was sold or what was acquired with the price, but cannot recover the products or income.

If after the declaration of absence or of death and the delivery of the property to certain heirs, others appear and establish a better right by final judgment, the property will be delivered to them on the same terms as to the absentee should he return; the definitive possessors will render accounts to the absentee and to his heirs; the legal period will begin to run from the day the absentee presents himself in person or by attorney, or from the date of final judgment regarding the inheritance. Definitive possession ceases, upon the return of the absentee, upon certain knowledge of his existence or of his death, or upon final judgment establishing the inheritance. In case of notice of existence, the definitive possessors will hold as provisional possessors. The judgment of presumption of death of a married absentee terminates the community of property; the survivor is only entitled to aliments. (Arts. 659-668.)

Art. 222. Miscellaneous Provisions.—The representative and the provisional and definitive possessors have the legal representation of the absentee in and out of court, and all their acts within the limit of their legal powers are valid and bind the absentee. The terms fixed for prescription are not suspended by the absence. The absentee and his heirs have right of action against the representative and possessors to recover all damages caused by their abuse of power, fault or negligence. The Ministerio Público will care for the interests of absentees and be heard in all suits affecting them, and in respect to declarations of absence or presumption of

death. The judge of the last domicile of the absentee, or if this is unknown, of the place where the greater part of his property is found, has jurisdiction of all matters relating to the absence. (Arts. 674-679.)

BOOK III. PROPERTY.

TITLE I.

PROPERTY, OWNERSHIP AND THEIR DIFFER- ENT MODIFICATIONS.

(*Código Civil del Distrito Federal.*)

CHAPTER 1.

THE DIVISION OF PROPERTY.

- Art. 223. Things Subject to Ownership.
224. Real Property — Bienes Inmuebles.
225. Personal Property — Bienes Muebles.
226. Use of Terms.

Art. 223. Things Subject to Ownership.— All things which are not excluded from commerce may be the subject of ownership. Things may be outside commerce by their nature or by disposition of law; the former, because they cannot be possessed by any person exclusively; the latter, because the law declares them irreducible to private ownership. Things which can be the object of ownership are divided into movable or immovable properties (*bienes muebles ó inmuebles*). (Arts. 680–683.)

Art. 224. Real Property — Bienes Inmuebles.— Real properties are: 1, Lands, buildings, and other structures which cannot be removed; 2, plants and trees while united to the soil, and the fruits hanging on the same, while not sep-

arated therefrom by harvesting or regular cutting; 3, everything attached to a building in a fixed manner, so that it cannot be detached without irreparable damage to the building or to the object attached to it; 4, statues placed in niches constructed in the building exclusively for them; 5, any artistic object imbedded in the building; 6, fish tanks, dove-cotes, beehives, and other abodes for animals; 7, machinery, vessels, instruments, utensils and animals intended by the owner of an estate for the immediate uses of the industry thereon conducted, and all piping used to conduct water to or to convey it from the estate; 8, animals used as breeding stock on rural estates devoted wholly or partly to stock-raising; 9, easements and other "real rights" upon real estate. The things mentioned in clauses 3, 4 and 5 are considered as personalty when the owner himself separates them from the building, except when the value of such objects has been computed in that of the building in constituting some "real right" thereon in favor of a third person. (Arts. 684-685.)

Art. 225. Personal Property — Bienes Muebles.—Property is personalty (*muebles*) either by its nature or by determination of law. Personalty by nature are those things which can be removed from place to place, whether they move by themselves or by means of exterior force; personalty by determination of law are obligations and rights or actions which have for their object personal things, or amounts recoverable by means of a "personal action." For like reason shares held by share-holders in commercial or industrial companies, are personalty, even when the company owns real property. Likewise perpetual rents and life annuities are personalty by operation of law, whether they are charged upon the public treasury, upon private properties, or are guaranteed by simple personal obligation. Also vessels (embarkations) of all kinds are personalty. Materials coming from the demolition of a building, or collected for the construction of new ones, are personalty while not employed in the build-

ing; also manures for lands while not applied to their object. In general all other things not enumerated in Art. 224 are personalty. (Arts. 686-693.)

Art. 226. Use of Terms.— When in legal enactments, or in acts and contracts the words *bienes muebles* (movable properties, personalty) are used, those things enumerated in the preceding Article shall be included within the term. When the words *muebles*, or *bienes muebles de una casa*, are used, they will only signify the furniture and utensils serving exclusively for the ordinary use of a family, according to the circumstances of the persons. When in the wording of a will or contract, a different meaning than above has been given to these words, such meaning will be given effect. (Arts. 694-696.)

CHAPTER 2.

PROPERTY WITH RESPECT TO ITS OWNER.

Art. 227. Public and Private Property.

228. Kinds of Public Property.

Art. 227. Public and Private Property.— Property is either public or private. Public property is that belonging to the Nation, to the States and to the Municipalities; and is governed by the provisions of the Civil Code when not covered by special laws; it is subject to all the rules of prescription established by the Code. Private property includes all things which belong legally to private persons, and of which no one can make use without the consent of the owner. Corporations can not acquire property except on the terms prescribed in Art. 27 of the Constitution and in the special laws on the subject. (Arts. 697-701.)

Art. 228. Kinds of Public Property.— Public property is

divided into that of common use and civic (*bienes propios*), the former being for the common use of all the inhabitants of a place; the latter is devoted to covering the public expenses of the cities and towns, and can only be used by private persons by special authorization. When a public road is vacated and sold, the abutting owners have the *derecho del tanto* in regard to the portion on which they abut, and for that purpose shall be notified of the sale. This right must be exercised within eight days after the notification, and the sale may be set aside within six months from its date if the notice is not given. The occupation and sale of public lands (*terrenos baldíos*) is governed by special law under authority of frac. 24 of Art. 72 of the Constitution.¹ (Arts. 702–708.)

CHAPTER 3.

UNCLAIMED AND ABANDONED PROPERTY.

Art. 229. Disposition of Property Found.

230. Same — Real Property.

231. Marine Salvage — Penalties.

Art. 229. Disposition of Property Found.— Things may be without an owner either because lost or abandoned. Anyone finding such thing must deliver it within twenty-four hours to the political or municipal authority of the nearest place, who shall at once have it appraised by experts and deposit it in the “Montepío” or with a responsible person, taking a receipt therefor. Notice of the finding shall be given by different forms of publication, and times up to three months, according to the value of the property, and if the owner does not claim it, the property shall be sold at public auction and the price received be deposited awaiting claimant. If the property or price is claimed by anyone, the whole record shall

¹ See Arts. 836, *et seq.*; 848, *et seq.*

be remitted to the competent judge, before whom the claim shall be proven, and the property returned. If not claimed, it shall be sold and one-fourth part be given to the finder and three-fourths to a public charity. (Arts. 709-721.)

Art. 230. Same — Real Property.— Anyone knowing of abandoned real property, and wishing to acquire a finder's share of it, may "denounce" it before the political authority of the place where it is located, the same steps being followed as above indicated, and he shall receive one-fourth of it, paying the costs of appraisal and advertisement. If a claimant appears for it, notice will be given the "denouncer," and if he insists in his denouncement, the record shall be remitted to the judge, and the denouncer must prove that the thing was abandoned, and if he fails, he shall pay the costs and any damages incurred. (Arts. 722-726.)

Art. 231. Marine Salvage — Penalties.— The taking possession of vessels or their freight, and of articles thrown into the sea or cast upon the shores, is governed by the Commercial Code. Anyone taking possession of real or personal property without complying with the requirements of the law, is subject to a fine of from five to fifty pesos, besides the penalties for unlawful detainer. (Arts. 727-728.)

TITLE II.

OWNERSHIP OF PROPERTY.

CHAPTER 1.

OWNERSHIP IN GENERAL.

Art. 232. Defined — Incidents.

233. Boundaries.

234. Partition.

Art. 232. Defined — Incidents.— Ownership (*propiedad*) is the right to enjoy and dispose of a thing, without other limitations than those fixed by law. Property is inviolable; it cannot be occupied except for cause of public utility and upon previous indemnity. The owner of land is the owner of the surface and of all that is below it; he may therefore use it and erect thereon all the works, plantations or excavations which he may wish, except as restricted by easements, and subject to the special laws of mining and the police regulations. (Arts. 729–731.)

Art. 233. Boundaries.— Every proprietor has the right to require the adjoining owners to survey, bound and set up landmarks upon their respective lands, if not previously done, or if the boundary marks have disappeared with time. (Art. 732.)

Art. 234. Partition.— Those who hold lands in common cannot be obliged to keep them undivided, except in cases where by the nature of the property or by force of law, the ownership is indivisible. If the ownership is not indivisible, but the property does not admit of convenient division, and the co-owners do not agree that one of them shall have it, it shall be sold and the proceeds be divided among the interested parties. The division of real property which is not made

with the formalities required by law for its sale, is void.
(Arts. 733-735.)

CHAPTER 2.

ANIMALS.

Art. 235. Unbranded Cattle.

236. Rights of the Chase.

237. Animals *feræ naturæ* — Fish.

Art. 235. Unbranded Cattle.— These are presumed, in absence of contrary proof, to belong to the owner of the lands where found, unless he has no cattle of that kind; and if several persons use the lands in common, the cattle will be presumed to belong to the one owning cattle of the same kind and breed; and if they cannot be proven to belong to any one of them, they shall be reputed to be owned in common.
(Arts. 736-737.)

Art. 236. Rights of the Chase.— The right of hunting and to appropriate its products may be freely exercised on public lands; but on private lands only with the consent of the owner, and is subject to police regulations and the following rules: The hunter becomes owner of the quarry by taking possession of it; and it is considered taken when it is killed in the chase or caught in the hunter's traps. If wounded game falls on private property, the owner must deliver it to the hunter or permit him to enter to get it; if he refuses, he shall pay the value of the game, and if the hunter enters without permission, he shall lose the game and pay all damages caused; and if more than one hunter, all shall be severally liable; likewise for damage caused by their dogs going on private property, but such action must be begun within thirty days. (Arts. 738-748.)

Art. 237. Animals *feræ naturæ* — Fish.— Farmers may destroy wild animals which injure their plantations, as well

as domestic fowls in sown grounds and orchards where there is growing fruit; but it is prohibited to destroy on the lands of another the nests, eggs and young of birds of any kind. Fishing and pearl-hunting are free in public and common waters, subject to police regulations; but in private waters the right pertains exclusively to the owner of the land. Anyone may appropriate wild animals in conformity to the police regulations, and swarms of bees not enclosed in, or which have abandoned their hives, but if they have rested on their owner's land, or he pursues them, keeping them in sight, they are not to be considered as having abandoned the hive. Wild animals escaping from their owners may be destroyed or taken by anyone; but in respect of domestic animals the rules relating to "strays" are to apply.¹ (Arts. 749-758.)

CHAPTER 3.

TREASURES.

Art. 238. Treasure Trove.

Art. 238. Treasure Trove.—Hidden treasure belongs to him who discovers it on his own property; but if found on public property or on that of a third person, the finder shall have one-half and the owner of the place the other half. If the thing is discovered be of interest to science or the arts, it shall be delivered to the Nation at its just price, which shall be distributed as above. The discovery of treasure must be accidental in order to enjoy the above rights; nobody on his own authority may make excavations, borings or other work on lands of another to seek for treasure; and should any be discovered by such means, it shall belong entirely to the owner of the land. Whoever without the consent of the owner commits such acts, shall pay all damages caused and the cost of restoring things to their original condition; if he

¹ See Arts. 229-231.

be a tenant, he shall forfeit the term although it is unexpired, if the owner so requires.

If the treasure is sought with consent of the owner, any agreement as to division shall be carried out; in the absence of such agreement, the expenses and the treasure discovered shall be equally divided. The same rules of division apply between landlord and tenant when the tenant discovers the treasure; if discovered by a third person the division is between the finder and the owner. If the owner himself finds the treasure on his own land held by a tenant, the latter has no part in the find, but may recover damages for any interruption of his occupancy or injury to his estate in seeking the treasure, even in case no treasure is found. By "treasure" is meant the hidden deposit of money, jewels or other precious objects, the legitimate source of which is unknown; it can never be considered as a product (*fruto*) of the estate. If found upon land held in *emphyteusis*, the *emphyteuta* shall be considered as the tenant or usufructuary. Mining, the cutting of timber, pasturage, etc., are governed by the special laws on those subjects. (Arts. 759-772.)

CHAPTER 4.

THE RIGHT OF ACCESSION. (ACCRETION.)

- Art. 239. Nature of Right — "Fruits."
- 240. Improvements — Crops.
- 241. Works on Own and Other's Land.
- 242. Rules of Bad Faith.
- 243. Liability of Owner.
- 244. Riparian Accretion.
- 245. Islands.
- 246. Confusion of Goods.
- 247. Indemnization.

Art. 239. Nature of Right — "Fruits."— The ownership of property gives the right to everything which it produces, or

is united with or incorporated into it, naturally or artificially; this is called the right of accession; and by virtue of it, to the proprietor belong the natural, industrial and civil "fruits" produced by it. The natural fruits are the spontaneous products of the soil, the increase, hides and other products of animals; such offspring, though yet unborn, belong to the owner of the mother unless by contrary agreement; industrial fruits are the product of work or cultivation; civil fruits are rents and income from real and personal property, and the interest on capital, and all such as not being produced by the thing directly, come from it by contract, testament or the law.² (Arts. 773-780.)

Art. 240. Improvements — Crops.— Everything united to or incorporated with another thing, or built, planted, sown, repaired or improved, on lands of another, belongs to the owner of the land, and are presumed to be made by him at his cost, unless proven to the contrary. The owner of a bush or tree spreading over the land of another, may require permission to go upon the land to gather the fruits, except as provided in Art. 276, and is liable for any damage which he may cause. The fruits of bushes or trees owned in common, and the costs of cultivation, are to be divided equally among the owners. (Arts. 781-784.)

Art. 241. Works on Own and Other's Land.— Whoever sows, plants or builds on his own land with seeds, plants or material of another, acquires the ownership of these things, but must pay the owner for them, and make good any damages, if he has acted in bad faith; the owner of the things has no right to demand their return, thereby destroying the work; but if the plants have not taken root and can be removed, he has the right to require it; if the seed or material have not yet been put to use or confused with others, the owner may reclaim them. The owner of the land on

² See Art. 251.

which another builds, sows or plants in good faith, has the right to these things upon paying their value, or to oblige the builder or planter to pay him the value of the land, or the sower its rental. If these acts were committed in bad faith, the person doing them loses the things without any right of indemnity or payment from the owner of the land; and the latter may require the demolition of the building and the restoration of things to their former condition at the cost of the builder. If both parties have acted in bad faith, that feature is eliminated, and their rights shall be adjusted under the rules applicable to acts done in good faith. (Arts. 785-791.)

Art. 242. Rules of Bad Faith.—Bad faith on the part of a builder, planter or sower is imputed when he does these acts, or permits another, without objection, to do them with his material on the lands of a third person, without asking the previous written consent of the owner; and bad faith on the part of the owner is imputed whenever the building, planting or sowing is done within his view, knowledge or connivance. (Arts. 792-793.)

Art. 243. Liability of Owner.—If the materials, plants, or seeds belong to a third party not affected by bad faith, the owner of the land is subsidiarily liable for the value of such objects, if the wrongdoer has no property liable for their value, or if the act done be to the profit of the owner, except in cases where the building is demolished as provided in Art. 241, above. (Arts. 794-795.)

Art. 244. Riparian Accretion.—To the owners of estates bordering upon rivers belong the accretions formed by the slow and imperceptible effect of the current; but those bordering upon lakes or ponds neither acquire the land uncovered by the natural diminution of the waters, nor lose that which is inundated by extraordinary floods. When the

force of the river carries away a considerable and recognizable portion of riparian land, and carries it towards a lower field or to the opposite bank, the owner of the portion carried away can reclaim it within two years, after which time he loses his right, unless the owner of the land to which it is added has not yet taken possession of it. If trees only are washed away and carried onto other lands, their owner can retake them within the like period, but can exercise no rights to them while on the other's land. When a river varies its course, the owners of the lands newly covered by the water lose the land so covered; and the riparian owners upon the abandoned river-bed acquire that part of the bed which remains in front of their lands to the middle of the bed or channel of the river. (Arts. 796-800.)

Art. 245. Islands.—Islands formed in seas adjacent to the coast are public domain, and can only be acquired by grant from the government; likewise as to those formed in navigable and floatable rivers, the latter being such as are navigable by tow-boats and rafts; those in non-navigable or non-floatable streams belong to the owners of both banks, according to their frontage, a dividing line being drawn through the center of the river-bed. When the river, although navigable, divides into two branches, leaving an estate or part of it isolated, the owner does not lose his property except in the part covered by the water. (Arts. 801-804.)

Art. 246. Confusion of Goods.—When two things (*muebles*) belonging to different owners are so united as to form a single thing, in the absence of bad faith, the owner of the principal thing acquires the accessory, upon paying its value; the principal thing being reputed as that of the greater value; if this cannot be determined, the object whose use, perfection or adornment is brought about by the union, is considered the principal. In painting, sculpture, writing, engraving and other works obtained by analogous processes,

the block, metal, canvas, paper, etc., is regarded as accessory. When the objects can be separated without injury, their respective owners may separate them; if they cannot be separated without injury to the accessory, the owner of the principal may demand the separation, indemnifying the other if he has acted in good faith; if he has acted in bad faith and caused the confusion, he loses the property and is liable in damages to the principal owner. If the latter brought about the confusion in bad faith, the owner of the accessory may demand its value and his damages, or the separation of the things, although the principal thing be thereby destroyed. If the confusion was brought about by either of the owners with the connivance of the other, their rights will be adjusted according to the rules applicable to confusion in good faith. (Arts. 805-813.)

Art. 247. Indemnization.—Where the owner of the things used without his consent has the right to indemnization, he may require either the delivery of a thing of equal kind, value and conditions, or its value as fixed by experts. If two unlike and different things are confused by the will of their owners or accidentally, and in the latter event they cannot be separated without injury, each owner acquires a right in proportion to his part, with respect to the value of the things confused. In the same way the rights of the parties will be adjusted if one of them in good faith caused the confusion, unless the other party prefers his damages. Whoever causes the confusion of goods in bad faith, loses his part of the property and is also liable for damages caused to the other owner. The person who in good faith uses the material of another in whole or in part to make a new kind of thing, shall own it, if its artistic merit exceeds the value of the material, for which he shall pay the owner; but if the artistic merit of the work is inferior in value to the material, the owner of the latter shall have the new thing, together with his damages, less the value of the work as fixed by experts.

The owner of the material employed, if it was used in bad faith, has the right to the work without paying the other for it, or he may demand payment of the value of the material and any damages he may have sustained. Bad faith in confusion of goods is governed by the same rules applicable to accession.³ (Arts. 805–821.)

TITLE III.

POSSESSION.

CHAPTER 1.

RULES OF POSSESSION.

Art. 248. Definitions.

249. Presumptions.

250. Good and Bad Faith.

251. Suspension of Good Faith.

252. Rights of Possessors.

253. Loss of Possession.

254. Maintenance in Possession.

Art. 248. Definitions.—Possession is the holding of a thing or enjoyment of a right, by ourselves or by another in our name; as a means of acquisition, possession is in good faith or bad faith. Those are capable of possessing who are capable of acquiring; legally incapacitated persons possess through their legal representatives. (Arts. 822–824.)

Art. 249. Presumptions.—The possessor is presumed to possess on his own account. He who possesses in the name of another is not a possessor in law; if he begins to possess in the name of another, he is presumed to continue possession in the same character. Possession carries with it the presumption of ownership for all legal effects. The actual possessor proving possession at a former time is presumed to have had possession in the interval. All presumptions in

³ See Art. 242.

this and the following Article shall prevail until the contrary is proven. (Arts. 825-829, 864.)

Art. 250. Good and Bad Faith.— A possessor in good faith is one who has, or with good reason believes that he has, a title sufficient to transfer the ownership; also one who is ignorant of the defects of his title; in this case ignorance is presumed. A possessor in bad faith is one who possesses, knowing that he has no title; one who without good reason believes that he has title; and he who knows that his title is insufficient or defective. The possessor is presumed to possess in good faith, except where he has violently dispossessed another, in which event the presumption of bad faith prevails. The possessor in good faith is entitled to the “fruits” received so long as his possession is not interrupted. (Arts. 830-834.)

Art. 251. Suspension of Good Faith.— Good faith is interrupted by the same means as prescription; ¹ but the possessor does not lose the right to receive the “fruits” except where specially so provided by law; but he must restore those received since the suspension, or their value, if he is finally adjudged to have possessed in bad faith. Natural “fruits” are considered received from the time they are gathered or separated; civil “fruits” are produced day by day, and belong to the possessor in this proportion, as soon as due, although not yet received. (Arts. 835-837.)

Art. 252. Rights of Possessors.— The possessor in good faith has the right to be credited with expenses incurred in the production of the natural and industrial “fruits” not yet gathered when the possession is interrupted, also to legal interest on such amount until it is repaid. If possession is acquired by robbery the possessor must restore all “fruits” received, as well as those not produced through his culpable

¹ See Art. 391.

omission to cultivate the property. The possessor in bad faith who has acquired title by conveyance, is only obliged to restore the "fruits" actually received, and not those he might have produced, unless he acquired the transfer knowingly by force or duress, or contrary to the provisions of the Code; in such cases he will be held liable the same as if he had acquired title by robbery. Every possessor should be repaid the necessary expenses; but only the possessor in good faith can retain the thing until the payment is made.

The possessor in bad faith can remove his useful improvements if the owner will not pay for them and they can be removed without detriment to the thing improved. Voluntary expenses are not recoverable; but the possessor in good faith may remove such improvements, if it can be done without injury, or if he repair the injury caused, according to the judgment of experts. Necessary expenses are those required by law, or without which the thing would be lost or damaged; useful expenses are those which while not necessary, increase the value or product of the thing; voluntary expenses are such as serve only to ornament the thing, or for the pleasure or convenience of the possessor. He must prove the amount of the expenses which he claims, and in case of doubt the same shall be valued by experts; if he has received any "fruits" to which he was not entitled, they shall be deducted.

Improvements and increase of value arising from nature or time belong always to the owner. The possessor in good faith is not responsible for the deterioration or loss of the thing possessed, although due to his own act; but he is responsible for the profit which he receives from such loss or deterioration. The possessor in bad faith is responsible for all loss or deterioration whether through his negligence or by accident, unless he prove that the latter would have happened even in the possession of the owner; nor is he responsible for loss occasioned naturally and inevitably by the mere lapse of time. (Arts. 838-854.)

Art. 253. Loss of Possession.— Possession is lost: By abandonment; by transfer, “onerous or gratuitous”; by the destruction or loss of the thing, or by its becoming “out of commerce.” Possession is also lost by the thing being possessed by another person for more than one year, counted from the day the new possession publicly began, or from the day the former possessor receives knowledge of it, if it began secretly. (Arts. 855–856.)

Art. 254. Maintenance in Possession.— The possessor has the right to be maintained in his possession if disturbed in it, or to be restored to it within the year above mentioned, if he requires it. If his possession be for less than the year, he can neither be judicially maintained in nor restored to it, except as against those whose possession is not better. The best possession is that supported by a legitimate title (lawful deed); in default of this, or if the titles are equal, the oldest is preferred; if both titles are doubtful, the thing in litigation shall be deposited. Possession taken violently from another is always presumed to be in bad faith. One judicially maintained in or restored to possession is presumed never to have been disturbed or dispossessed; he has the right to recover all damages which he has sustained. (Arts. 857–864.)

TITLE IV.

USUFRUCT, USE AND OCCUPANCY.

CHAPTER 1.

USUFRUCT IN GENERAL.

Art. 255. Definitions — How Created.

256. Legal Incidents.

Art. 255. Definitions — How Created.— Usufruct is the right to enjoy the property of another, without altering its

form or substance; it may be created by law, by acts *inter vivos*, by last will, and by prescription; and may be created in favor of one or more persons, simultaneously or successively. (Arts. 865–868.)

Art. 256. Legal Incidents.— If created in favor of several persons simultaneously, either by inheritance or by contract, upon the termination of the right of one of such persons, the usufruct passes by way of accretion to the others; if constituted successively, the usufruct only has effect in favor of persons in existence at the time of the commencement of the right of the first usufructuary.

Civil corporations which can neither acquire nor administer real property, cannot have a usufruct constituted upon property of that kind.

The usufruct may be constituted from or until a day certain, absolutely or upon condition; and is for life (*vitalicio*) unless the contrary is expressed in the instrument creating it. Creditors of the usufructuary may seize the products of the usufruct and oppose every cession or renouncement of it which may be made in fraud of their rights. The rights and obligations of the usufructuary and the owner are determined in every case by the instrument creating the usufruct. (Arts 869–874.)

CHAPTER 2.

THE RIGHTS OF THE USUFRUCTUARY.

Art. 257. Legal Rights.

258. Exercise of Rights.

Art. 257. Legal Rights.— The usufructuary has the right : to exercise all real, personal and possessory actions and defenses, and to be made a party to all litigations, even those of the owner, in which he may be interested; to receive all

natural, industrial and civil "fruits" of the property subject to the usufruct. The natural and industrial "fruits" uncollected at the beginning of the term belong to him; those uncollected at its expiration to the owner. Neither party may claim reimbursement on account of work, seeds and similar expenses; but this does not affect the rights of croppers or tenants entitled to receive part of the products either at the beginning or end of the term. The "civil fruits" belong to the usufructuary in proportion to the length of the term, though not yet collected. Products of mines acquired by denouncement and which are in working condition, do not belong to the usufructuary unless expressly granted in the instrument, or unless the usufruct is universal; but if he discovers and denounces a mine during the term, it shall be entirely his upon indemnifying the owner of the land, according to the Mining Laws. If a third person or the owner of the land discovers the mine, the indemnity for the land will be paid to the usufructuary as in the case of treasures. The usufructuary is entitled to all increase of the property by "accession," and to easements existing in its favor, and such other rights as are inherent in the mines. (Arts. 875-881.)

Art. 258. Exercise of Rights.—The usufructuary may lease or convey to another the usufruct property during the term, but cannot impose perpetual easements on it, and those he grants end with the term. If it consists of capital at interest, only the interest belongs to him; and if the capital be redeemed, it must be reinvested to the satisfaction of both parties. The usufructuary may use the property as a good father of a family would for the uses for which it is intended, and is only bound to restore them at the end of the term in the condition in which they may be, being liable only for deterioration or waste caused by his fraud, fault or negligence. He may make such use of a forest, for firewood or timber, as the owner would make, according to circumstances

and the customs of the country; but may not fell trees except for making repairs, and then only after notifying the owner of the necessity for doing so. He may make the customary use of the live-stock, but without injury to them. He may make useful and voluntary improvements, but cannot claim pay for them, but may remove them if it can be done without injury.

The owner may sell the property, but only subject to the rights of the usufructuary. The latter has the *derecho del tanto*, or preferential right to purchase the property. (Arts. 882-892.)

CHAPTER 3.

OBLIGATIONS OF THE USUFRUCTUARY.

Art. 259. Preliminary Duties.

260. Losses and Repairs.

261. Taxes and Charges.

Art. 259. Preliminary Duties.— Before taking possession, the usufructuary must make an inventory of all the property, stating the values of the personalty and describing the condition of the realty, and must give bond unless expressly excused, for the care and preservation of the property, and its return to the owner, with all accessions, at the end of the term, in good condition, except as provided by Art. 210; but a donor reserving the usufruct is exempted from giving bond unless he expressly obligates himself to do so. Where the usufruct is created by contract, which is silent in regard to bond, the usufructuary is exempt if the grantor remains the owner, but if a third person becomes owner, the bond may be required; if the usufructuary under onerous title fails to give the bond, the owner may intervene in the administration of the property in order to preserve it; but if he gives the bond he is entitled to receive all the products during the time

stipulated; if he assigns his rights, he is liable for any injury caused to the property by his assignee. (Arts. 893-899.)

Art. 260. Losses and Repairs.— If the usufruct is of animals or cattle, the usufructuary must replace all missing ones, unless they all perish from epizootic or other unusual cause; if only part perish, the usufruct continues as to the remainder. The usufructuary of fruit trees must replace those which die naturally. If the usufruct is by gratuitous title, the usufructuary must make the repairs necessary to keep the property in the condition in which he received it, unless the necessity for repairs comes from the old age, intrinsic defect or serious deterioration of the property before he received it; but if he wishes to make such repairs, he must obtain the consent of the owner, and is not entitled to compensation of any kind; nor is the owner obliged to make repairs in the cases mentioned, nor can he claim compensation if he makes them.

If the usufruct is upon onerous title, the owner must make all proper repairs so that the property shall produce the usual fruits; or the usufructuary may make such repairs upon first giving notice to the owner, in which event he may recover the expense at the end of the term; but if he fails to give the notice, he will be liable for the loss of or damage to the property through want of repairs; he cannot recover compensation for making them. (Arts. 900-910.)

Art. 261. Taxes and Charges.— Diminution of the "fruits" of the estate or property caused by taxes and ordinary charges are borne by the usufructuary; but that effected by like causes in the estate or property itself, is on account of the owner; and if in order to preserve it entire, he makes the payment, he is entitled to interest on the amount paid during the rest of the term; but if the usufructuary makes the payment, he is not entitled to interest. One who receives the universal usufruct by succession must pay the entire legacy or life income, and his proportional share if he

acquires only an aliquot part. The usufructuary of a mortgaged estate is not obliged to pay the mortgage debt; if the estate is judicially attached or sold in payment of the debt, the owner must make good the loss unless otherwise provided. If the usufruct is of an inheritance, the usufructuary may advance the money to pay the hereditary debts upon the property, and may recover it without interest from the owner at the end of the term; but if he refuses to make the advancement, the owner may sell sufficient of the property to pay the amount; if the owner advances the money, he is entitled to interest from the usufructuary.

If the rights of the owner are disturbed by a third party, the usufructuary must notify him, and if he does not, he is liable for all damages suffered. The expenses, costs and judgments in suits brought in respect of the usufruct are to be borne by the owner if it is by gratuitous title, and in proportion to their respective interests if both parties are concerned in it; but the usufructuary will in no case have to pay more than the usufruct produces. If either of the parties prosecutes a suit without citation to the other, a favorable judgment avails the party not cited, while an adverse judgment does not prejudice him. (Arts. 911-924.)

CHAPTER 4.

EXTINCTION OF THE USUFRUCT.

Art. 262. How Terminated.

263. Impediments.

Art. 262. How Terminated.—A usufruct is terminated: 1, By the death of the usufructuary; 2, by the expiration of the term for which it was created; 3, by the fulfillment of the condition upon which it was to terminate; 4, by the merger of the usufruct and the ownership in one person; 5, by prescription, in conformity with the rules applicable to real

rights; 6, by the renouncement of the usufructuary, except in case of fraud on creditors; 7, by the total loss of the property subject to the usufruct; if such loss be not total, the right continues as to what remains; 8, by the termination of the right of the creator of the usufruct; 9, by failure to give bond, if not exempted.

The usufruct created in favor of corporations capable of holding real property, may only continue for thirty years, or less if the corporation is sooner dissolved. A usufruct created for the time until a third person reaches a certain age, continues for the number of years indicated, although the person dies sooner. (Arts. 925-927.)

Art. 263. Impediments.— If the usufruct be of a building, and it be ruined by fire, old age or other accident, the usufructuary can not use the ground or the material, but he may do so if the usufruct were of an estate or ranch of which such building only formed a part. If the building be restored by the owner or the usufructuary, the rules in Art. 260, relating to repairs, apply. A temporary hindrance through accident or *vis major* does not extinguish the usufruct nor give claim to indemnity; the fruits produced during such time belong to the usufructuary. Nor does bad management by the usufructuary extinguish the usufruct; but if this is serious, the owner may petition to be put in possession of the property, giving bond to pay annually to the former the net proceeds of the same during the term, less the commission which the judge may allow him for administration.

Upon the termination of the usufruct the owner will enter into possession, unaffected by any contracts which the usufructuary may have made, except as to the right of croppers or tenants to receive part of the fruits at the expiration of the term. (Arts. 928-933.)

CHAPTER 5.

USE AND OCCUPANCY.

Art. 264. Rights and Duties.

265. Taxes and Charges.

Art. 264. Rights and Duties.—The rights and obligations of a user and of an occupant are governed by their contracts, and in default thereof by the rules here stated, which include those in regard to natural and industrial fruits, making inventory and giving bond, giving notice to the owner of any disturbance of his rights, and contributing to the expenses of any litigation concerning the property, applicable to usufructs, stated in the previous chapters. The user may use enough of the products of the property to supply the needs of his family; and the occupant may occupy all the rooms intended for occupancy, and receive others as company; but he cannot use other parts of the building nor collect rents from it. Neither can he assign or sublet his right to another in whole or part, nor can said rights be seized by creditors. He who has use of a flock or herd may use sufficient of the young, and of milk and wool, to supply the needs of himself and family. (Arts. 934–939.)

Art. 265. Taxes and Charges.—If the user consume all the product of the property, or the occupant occupy all the rooms of the house, they are obliged to pay all the charges of cultivation, repairs and taxes, the same as an usufructuary; but if the former uses but part of the products, and the latter occupies but part of the house, they shall pay nothing of these charges, so long as enough of the products or benefits remain to the owner to cover such charges; but if not sufficient remains, the user or occupant must pay the difference. (Arts. 940–941.)

TITLE V.

EASEMENTS. (*Servidumbres.*)

(Código Civil, Arts. 942-1058.)

CHAPTER 1.

GENERAL PROVISIONS AS TO EASEMENTS.

Art. 266. Definitions.

267. Kinds of Easements — How Created.

Art. 266. Definitions.— An easement is an encumbrance (*gravámen*) imposed upon an estate or inheritance for the benefit or service of another, belonging to a different owner; that in favor of which the easement is created is called the dominant estate; that which suffers it is called the servient estate. An easement consists in not doing or in tolerating something; before the owner of the servient estate can be required to do any act, it must be expressly determined by law or by the contract creating the easement. (Arts. 942-943.)

Art. 267. Kinds of Easements — How Created.— Easements created for the subsistence or convenience of a building or of the object for which the building is intended, are urban easements; those for the convenience or use of agricultural objects are rural easements, regardless of whether the estate is in a town or in the country.

Easements are continuous or discontinuous, apparent or unapparent; the former are those the use of which may exist indefinitely without any act of man, as that of lights and others of the same kind; discontinuous are those whose use is dependent on some act of man, as ways of passage and the like; apparent are those visibly indicated for use, as a bridge, ditch, and the like; unapparent are those of which there is

no outward indication, such as the restriction of building in a certain place or only to a certain height and others similar. Easements are inseparable from the estate on which they are imposed, and pass with the change of ownership until legally extinguished; they are indivisible, and unaffected by the breaking up of either dominant or servient estate. Easements are created by contract or last will, and by law, either expressly creating them or authorizing them by prescription; every owner has the right to enclose his property in whole or part, at his expense, in any way he prefers, except as against easements of public or private use acquired by just title, including prescription.

Legal easements are such as exist by operation of law from the relative position of estates, either for the benefit of the public or of private persons; they are governed, in the absence of special provisions, by the same rules applicable to voluntary easements, as stated in Art. 281, except in regard to construction of works. (Arts. 944–956.)

CHAPTER 2.

LEGAL EASEMENTS OF WATERS.

Art. 268. Surface and Collected Waters.

269. Public and Navigable Waters.

270. Conduction of Water — Incidents.

Art. 268. Surface and Collected Waters.— Lower lands are subject to receive the waters, as well as earth and rocks carried by them, which naturally and without the work of man flow onto them from higher lands; the owner of the lower lands cannot construct works to impede nor the owner of the higher lands to aggravate such flow. The owner of lands on which there are, or on which it is necessary to construct, defensive works to restrain the water, must either make the repairs or constructions, or permit the owners of

lands exposed to damage to make them without prejudice to him, unless the special police laws impose the duty of making them on him; this applies to cases where it is necessary to free some estate from materials which impede the course of the water to the damage or danger of third persons; all owners sharing in the benefits of such works must contribute to their cost in proportion to their interest, in the opinion of experts, and those who by their fault occasion the damage are liable for the costs.

The owner of lands on which there is a natural spring, or who has constructed a flowing well, cistern or dam to retain the rain water on his own property, may freely dispose of the water; if surplus waters escape onto another property, the owner of the latter may acquire the ownership of them by the lapse of ten years from the time he constructs works intended to facilitate the fall or flow of the waters, but the owner of the spring or dam may make all possible use of the waters within the limits of his own property; he is not liable for damages although his well decreases the water in that on other property. (Arts. 957-964, 969.)

Art. 269. Public and Navigable Waters.—The ownership which the State has over waters does not prejudice the rights lawfully acquired therein by private persons or corporations in accordance with the special laws in regard to public property, but the exercise of such rights is subject to the following limitations: no one may use the waters or banks of rivers in such way as to obstruct navigation, nor construct works which impede the free passage of boats or rafts or other modes of river transportation, nor can such right be acquired by prescription or otherwise; nor can any one using the water of a river impede the use of the water necessary for the supply of towns or properties, or the construction of works necessary to obtain it in the way least burdensome to the owner, but he is entitled to compensation unless the inhabitants have acquired the use of the water by prescription or other lawful

title. The provisions of the Code in regard to easements of waters do not affect the rights heretofore legally acquired thereto; but the owner of the waters cannot change their course in such way that they damage others by overflow or otherwise. (Arts. 965-968.)

Art. 270. Conduction of Water—Incidents.—Any one wishing to use water of which he may dispose, has the right to conduct it through intermediate properties, except buildings and their yards, gardens and other dependencies, upon indemnifying the owners and those of lower lands through which the water percolates or falls. The person making use of such right must construct the necessary channel through the intermediate properties, although there are canals thereon for other waters, unless the owner of the latter offers their use without disadvantage to the former; the passage of waters must also be permitted across the canals and aqueducts in the readiest way, provided that the course and volume of the water in the latter are not altered or the waters of the two are not mingled. Where it is necessary to carry the aqueduct through a public road or stream, permission must first be obtained from the public authority to whose inspection it is subject, which permission will only be granted subject to the police regulations and on condition that the water be carried across without obstructing or damaging the road or stream; if without such permit he conducts the water or spills it on the road, he must restore it to its former condition and pay all damages caused, besides being liable to the penalties imposed by the police regulations.

Before making use of the above right, the party claiming it must: 1, Prove that he has the right to dispose of the waters he seeks to conduct; 2, show that the passage which he asks is the most convenient one for the purposes for which he wants to use the water; 3, that it is the least burdensome for the properties through which it is to pass; 4, pay the value of the land which the canal is to occupy, as estimated

by experts, and one-tenth more; 5, indemnify the immediate damages including those resulting from dividing the servient estate into two or more parts, and any other depreciation. Where the servient owner offers the use of existing canals, the party conducting the water, must pay, in proportion to its volume, the value of the canal and the costs of its maintenance, and other costs caused by the passage of the water. The amount of water carried through a canal on another's land is only limited by the capacity of the canal, and it may be amplified upon paying the costs and the value of the land taken and damages caused. These provisions apply to the drainage of swamp lands.

The easement of waters carries with it the right of passage for persons and animals and the carriage of materials for the use and repair of the aqueduct and the care of the water conducted, on the terms provided in the next Article. The concessions of waters made by competent authority are presumed made without prejudice to other rights previously acquired. Every one making use of an aqueduct on his own or other's land must construct and maintain all the necessary works to prevent injury to others, and if there are several interested, they will all contribute to the expenses in proportion to their interest, unless otherwise agreed. (Arts. 970-987.)

CHAPTER 3.

LEGAL EASEMENT OF PASSAGE.

Art. 271. Right of Passage—Incidents.

Art. 271. Right of Passage—Incidents.—The owner of an estate shut off from the public way by the lands of others, has the right to pass though them to the highway, upon payment only of compensation for any damage caused by the easement; the action to enforce the compensation is subject

to prescription, but the passage obtained is not affected thereby. The owner of the servient estate has the right to indicate the place where the passageway shall be established; if the judge declares it to be impracticable or very inconvenient for the dominant estate, the landowner must designate another way; if the judge finds it open to the same objection, he will designate a more convenient way, seeking to reconcile the interests of the parties; the shortest way through several estates should be chosen, or if of equal distance the judge will designate the way; the width of the way will be such as to serve the needs of the dominant estate, in the opinion of the judge, but not to exceed five meters or be less than two, except as otherwise agreed by the parties; if there had previously been a passageway between an estate and the highway, only the estate through which it lay can be required to permit passage. (Arts. 988-995.)

CHAPTER 4.

LEGAL EASEMENT OF PARTY OWNERSHIP.. (MEDIANERÍA.)

Art. 272. Ownership — Presumptions.

273. Rights and Duties of Party Owners.

274. Party Owned Houses.

Art. 272. Ownership — Presumptions.— Where it appears who built a dividing wall between two estates, the person who paid for it is the exclusive owner; if it was built by the adjoining owners, or the builder is unknown, it is a party wall. Where there is no outward sign showing the contrary, party ownership is presumed: 1, In dividing walls between adjoining buildings up to the common point of elevation; 2, in dividing walls between gardens or corrals in town or country; 3, in fences, stockades and hedges dividing country estates. If the structures are not of the same height, the presumption extends only to the height of the lowest structure. There is

an outward sign against joint ownership: 1, Where there are windows or openings in the walls between buildings; 2, where the wall, fence, etc., is knowingly constructed entirely on the ground of one party and not half on that of both; 3, where the wall supports girders, framework, etc., of one party and not of the other; 4, where it is so constructed that the coping slopes to only one side; 5, where it is of stone-work, and all the so-called "stepping stones" (*pasaderas*) are on one side of the wall; 6, where the wall forms part of a building on one side, and there is a garden or vacant land on the other side; 7, where one of the estates is surrounded by the fence, etc., and the other is not; 8, where the fence surrounding one estate is of a different kind from that of the other on the side near the former; in such cases it is presumed to belong exclusively to the owner having such signs in his favor. The same presumptions apply to ditches and drains opened between the estates; but a sign to the contrary is that the earth or rubbish thrown out in opening or cleaning it is all on one side, except where the lay of the land obliges it to be thrown to only one side. (Arts. 996-1002.)

Art. 273. Rights and Duties of Party Owners.—The owners of both estates are bound to maintain the party wall, ditch or hedge, and if injured by the dependents, animals or acts of either, they must restore it and pay all damages caused; all costs of construction, repair and maintenance will be borne pro rata by all owners sharing in the benefit; one party may relieve himself of the burden by renouncing his party ownership unless the wall supports his house. The owner of a house supported by a party wall, may or may not, on tearing down his house, renounce the party ownership; if he does so, he must bear all the necessary expenses of avoiding or repairing the damages caused by the demolition; if he does not renounce it, he is under the same obligation, besides the above stated duties of repair and maintenance. The owner of an estate adjoining a dividing wall which is not a party wall,

can only establish it as the latter in whole or part by contract with its owner.

Any owner may raise a party wall at his own expense and paying all damages caused; he must also pay all costs of maintenance of the part of the wall increased in height or thickness, and those caused by the increased height or thickness, or to entirely rebuild it if it can not support the increase, and if necessary, to furnish his own ground for the purpose; in such cases the wall remains a party wall up to its original height, above which it belongs exclusively to the builder, but the other owners may acquire party rights by paying their proportion of the cost of the work and for one-half the ground taken. Each owner of a party wall may use it in proportion to his right of joint ownership, and may accordingly build and support his building on the party wall or insert beams into it to one-half its thickness, but without hindering its common use and the like right of the other parties; and in case of disagreement, the necessary conditions of the new work will be settled by experts. (Acts. 1003-1013.)

Art. 274. Party Owned Houses.—Where different floors of a house belong to different owners, the following rules will be observed if the deeds do not determine the manner of contributing to necessary costs: 1, The main walls, roof, and other parts of common use will be maintained by all the owners in proportion to the value of the floor of each; 2, each one will pay for the flooring of his floor; 3, the pavement of the portal, entry gate, common yard, and common charges of keeping, will be paid pro rata by all; 4, the stairway leading to the first floor will be paid pro rata by all except the owner of the ground floor; that leading from the first to the second floor will be paid by all except the owners of the ground and first floors, and so on. (Art. 1014.)

CHAPTER 5.

BUILDING RESTRICTIONS, NUISANCES, ETC.

Art. 275. Limitations on Buildings.

276. Planting — Trees.

Art. 275. Limitations on Building.—No one may build or plant near public forts or buildings except as provided by the special regulations on the subject; the maintenance of navigation, the construction and repair of public roads, and other public works, are governed by special laws or regulations, or in default of such by the provisions of the Code. No one may construct wells, sewers, aqueducts, furnaces, forges, chimneys, stables, deposits of corrosive materials, steam machinery, or other structures devoted to uses which may be dangerous, or injurious, except at such distances from dividing or party walls as prescribed by the regulations, or without constructing necessary protective works in the manner prescribed by the regulations, or fixed by experts if not otherwise provided. (Arts. 1015–1017.)

Art. 276. Planting — Trees.—No one may plant large trees within two meters, or small trees or bushes within one meter, of the boundary of adjoining property; the adjoining owner may require trees planted at a less distance to be removed, and even those at a greater distance, where they cause him evident damage. If the branches of trees extend over an adjoining property, garden or yard, the owner of the latter may require the limbs extending over to be cut off, and if the roots extend into his soil, he may himself cut them off within his property, first giving notice to his neighbor. Trees growing in a party fence or marking a boundary are party property, and cannot be cut or replaced with others without the consent of both owners, or by judicial decision rendered in case of their disagreement. (Arts. 1018–1021.)

CHAPTER 6.

LEGAL EASEMENTS OF LIGHT, AIR AND VIEW.

Art. 277. Restrictions — Rules.

278. Easement of Drainage.

Art. 277. Restrictions — Rules.— Neither owner may open a window or other opening in a party wall without the other's consent. The owner of a non-party wall near an adjoining property may open windows or openings in it to admit light, at such a height that the lower part of the window shall be at least three meters from the floor of the apartment to which it admits the light, and such window must in all cases be covered with an iron grating set in the wall, and with a wire net with meshes of not more than three centimeters. Nevertheless, the owner of a property adjoining the wall in which the windows or openings are, may build a wall adjoining it, or if he acquires party ownership, may use the same wall, although by doing either he closes up such windows or openings. No one may have bay-windows, balconies or other projections extending over the boundary line; nor can he have side or oblique views over the adjoining property if it is not six-tenths of a meter distant, measured from the dividing line between the two properties. (Arts. 1022–1026.)

Art. 278. Easement of Drainage.— The owner of a building must so construct the roof that the rain waters shall not fall on the adjoining ground or building. Where a lot of ground in town or country is so surrounded by other lands that it has no direct communication with the public road or mains, the surrounding owners must permit its drainage through their property, the size and course of the drain to be fixed by the judge after hearing the interested parties and the opinion of experts, and observing as nearly as possi-

ble the rules in respect to the easement of passage. (Arts. 1027-1028.)

CHAPTER 7.

VOLUNTARY EASEMENTS.

Art. 279. General Rules.

280. Acquisition of Voluntary Easements.

281. Rights and Obligations of the Parties.

Art. 279. General Rules.— The owner of a property may establish whatever easements upon it and in such manner as he sees fit, so long as they do not affect public order. The establishment of an easement is a partial alienation of the servient estate, so that such easements must be established with the same formalities as required for transfers of property. If there are several owners, an easement cannot be established without the consent of all; but if one acquires an easement on another property in favor of the common estate, all may take advantage of it, subject to the natural incidents of it and to any conditions on which it was acquired. (Arts. 1029-1032.)

Art. 280. Acquisition of Voluntary Easements.— Continuous and apparent easements may be acquired in any lawful manner, including prescription; but unapparent continuous easements, and discontinuous ones of either kind, cannot be acquired by prescription. The person claiming an easement must prove his right although he is in possession of it; in default of documents establishing easements which cannot be acquired by prescription, the right can only be proven by judicial confession or acknowledgment made in *escritura pública* by the owner of the servient estate, or by final judgment declaring its existence. The existence of an apparent sign of an easement between two properties, estab-

lished or maintained by the owner of both, is considered as a title for the continuance of the easement when the properties pass to different owners, unless the contrary appears in the deed of conveyance of either. The establishment of an easement carries with it the right to all necessary means of using it, such accessories ceasing with the extinguishment of the easement, unless such accessories were acquired by a different title from the easement. (Arts. 1033-1039.)

Art. 281. Rights and Obligations of the Parties.—The use and extension of voluntary easements is governed by the terms of the instrument establishing them, or in default of such provisions, by the following rules: The owner of the dominant estate may at his cost make all works necessary for its use and maintenance, and must likewise make all such as are necessary to protect the other owner from unnecessary burdens, and is liable for damages caused by his failure or want of care. Any obligation assumed by the servient owner to make or pay for any work may be discharged by surrendering the property to the dominant owner; but the former cannot in any way impair the easement; but if the place originally designated for the easement should become seriously inconvenient, he may offer the other a more convenient one, and the latter cannot refuse it if not disadvantageous; the servient owner may also make such works as may render the easement less burdensome to him if thereby he does not injure the dominant owner, but if they become injurious he must restore the former conditions and pay any damages; the judge will decide any objections made.

Any doubt about the use or extension of an easement will be decided in the way least burdensome to the servient owner, but not so as to impair the use of the easement. If the dominant estate is divided between different owners, each one may make use of the easement, but without altering its form to the prejudice of the servient owner; but if the easement was established in favor of only one part of the dominant estate, it

can only be used by the owner of such part. (Arts. 1040–1050.)

CHAPTER 8.

EXTINCTION OF EASEMENTS.

Art. 282. Voluntary Easements.

283. Legal Easements.

Art. 282. Voluntary Easements.— Voluntary easements are extinguished: 1, By the merger of both estates in the same person, and they are not revived by a subsequent separation, except in cases of apparent signs, as provided in Art. 280; but if the act of merger was in its nature severable (*resoluble*), the easements revive when the severance takes place; 2, by non-use; for five years, if continuous and apparent and in good faith, or ten years without good faith, from the time the apparent sign of easement disappeared; discontinuous and unapparent, for ten years with good faith, and fifteen years without good faith, from the time it ceased to be used, if due to the act of the servient owner; but if he did no act to prevent use, or the use continued notwithstanding, there is no prescription; 3, where the estates become, without the fault of the servient owner, in such condition that the easement cannot be used, but it revives if they afterwards become serviceable, unless the period of prescription has lapsed in the meanwhile; 4, by remission made gratuitously or for a consideration by the dominant owner; 5, upon the expiration of any time or performance of any condition subject to which it was established. The manner of use of an easement may prescribe in the same way as the easement. User by one of several joint owners saves prescription, and if for any reason prescription does not run against any one of them it will not run as against the others. (Arts. 1051–1054.)

Art. 283. Legal Easements.— Legal easements established for public or communal uses are lost by non-use for ten years, upon proof that during such time the persons who used them have acquired another of the same kind at another place. If the dominant and servient estates come into the possession of the same owner the easements are extinguished, but revive if they are again separated although no apparent sign is preserved. The legal easement of lights and views is extinguished by non-user as in clause 2 of the preceding Article, except: 1, If the owner of the dominant estate voluntarily closes the windows or openings in such way that it is apparently definite, he loses the right to open them again; 2, if they were covered by the servient owner as provided in Art. 277, the dominant owner may open another in a free space, and if the work which closed the former ones is destroyed he recovers the right to their use.

The owner of an estate subject to a legal easement may release himself from it by agreement with the following restrictions: 1, If it was created in favor of a whole town or community, the latter is not affected as a whole unless the agreement was made with the *Sindic*, but it is effective as against any individuals waiving it; 2, no agreement is valid in regard to easements of public use, such as riparian rights; 3, an agreement renouncing an easement of lights and views is considered as a new easement to not use, and the former servient estate becomes dominant, and *vice versa*; 4, an agreement in regard to easements of passage and drainage must be made with the approval of the owners of the surrounding properties, or at least of the owner of that through which the easement is established anew; 5, the renouncement of the legal easement of drainage is only valid when in conformity with the police regulations. (Arts. 1055–1058.)

TITLE VI.

PRESCRIPTION.

(*Código Civil*, Arts. 1059–1129; *Código de Comercio*, Arts. 1038–1048.)

CHAPTER 1.

PRESCRIPTION IN GENERAL.

- Art. 284.** Definition and Kinds.
285. Who may Acquire By.
286. Waiver of Right.
287. Fiduciary and Joint Interests.
288. Prescription against Government.
289. Tacking Possessions.

Art. 284. Definition and Kinds.— Prescription is the means of acquiring the ownership of a thing, or of discharging a debt or obligation, through the lapse of a certain time and under the conditions fixed by the law. The acquisition of things or rights through possession is called positive prescription; the exoneration from obligations by failure to enforce them is called negative prescription. Only those things, rights and obligations of a commercial nature (which are in commerce) are subject to prescription, except as provided by law. (Arts. 1059–1061.)

Art. 285. Who may Acquire By.— Whoever has capacity to acquire property by any means may acquire by positive prescription, including minors and others under disability, through their legal representatives; while negative prescription inures to the advantage of all. (Arts. 1062–1063.)

Art. 286. Waiver of Right.— The right to acquire by positive prescription cannot be renounced in advance; rights of negative prescription may be so waived; such waiver only has

the effect of doubling the period of prescription, but not to exceed twenty years, counted from the time of the waiver. The prescription already begun to run, and that fully expired, may be waived; but such cases are regarded as a donation of the rights acquired, and are governed by the rules applicable to that contract. Only those capable of disposing of property can renounce. The waiver may be express or tacit, the latter being an act equivalent to the abandonment of the right acquired. Creditors and all who have a legitimate interest in the preservation of the right, may enforce it, although the debtor or the owner may have waived the rights acquired. (Arts. 1064–1069.)

Art. 287. Fiduciary and Joint Interests.—He who holds in the name of another cannot acquire the thing by prescription unless the cause of possession is legally changed, as when the holder begins to hold in good faith and by just title in his own name, in which case prescription begins to run from the time the change is effected. If several persons hold property in common, none of them can avail of prescription against the others, but may as against a third person, to the joint advantage of all the partners. The defense of prescription available to one joint co-debtor does not avail the others unless the legal period of time has run in the same way in favor of all; in such case the creditor can enforce against such others the amount of the obligation less the share extinguished by prescription. Prescription available to a principal debtor inures in favor of his sureties. (Arts. 1070–1075.)

Art. 288. Prescription against Government.—The Federal Government, Federal District, Territories, as well as Municipalities, and all public bodies and moral persons, are subject to the same rules as are private persons, in regard to the prescription of their properties, rights and actions which are susceptible of private ownership. (Art. 1076.)

Art. 289. Tacking Possessions.—A person in possession claiming prescription may complete the necessary term for prescription by uniting to the time he has held, the time that the property was held by another under whom he claims, provided that both possessions comply with the legal requisites.

The requirements of the Civil Code in regard to the time and other requisites of prescription shall govern in all cases unless otherwise expressly provided by law. (Arts. 1077–1078.)

CHAPTER 2.

RULES OF POSITIVE PRESCRIPTION.

Art. 290. Possession — Definitions.

291. Real Property.

292. Personal Property.

Art. 290. Possession — Definitions.—The possession necessary to prescription must be: 1, Founded on a just title; 2, in good faith; 3, peaceable; 4, continuous; 5, public. A just title is one which is or is with good reason believed to be sufficient to convey the ownership; and he who claims prescription must prove the existence of the title on which he bases his right. Good faith is only necessary in the moment of acquisition. Peaceable possession is that which is acquired without violence; only after violence is judicially declared to have ended, does beneficial possession begin. Continuous possession is that which has not been interrupted in any of the ways prescribed in chapter 5 for the interruption of prescription. Public possession is that which is enjoyed in such a way that it may be known to those interested in interrupting it. (Arts. 1079–1085.)

Art. 291. Real Property.—All real property is prescribed, with good faith, in ten years; with bad faith, in twenty

years, except as provided in Art. 287 in regard to fiduciary relations; the same rules apply to the acquisition by prescription of real rights and actions, including voluntary easements. (Arts. 1086–1087.)

Art. 292. Personal Property.—Personal property prescribes in three years, if the possession is continuous, peaceable, founded on just title and in good faith, the two latter elements being always presumed; and in ten years if without just title and good faith. If the property was lost by its owner or acquired by crime, and comes into the possession of a third person in good faith, it will only prescribe in his favor after four years. (Arts. 1088–1090.)

CHAPTER 3.

NEGATIVE PRESCRIPTION.

Art. 293. When Effective.

294. Two Years Prescription.

295. Three Years Prescription.

296. Five Years Prescription.

297. Annuities.

298. Accounting.

Art. 293. When Effective.—Negative prescription becomes effective, whether with good or bad faith, by the mere lapse of twenty years from the time the obligation might have been enforced by law; but the obligation to furnish aliments is never prescribed. (Arts. 1091–1092.)

Art. 294. Two Years Prescription.—The right of action to demand the return of a note or “private writing” acknowledging money loaned but not actually received, prescribes in two years from its date. If pleaded within the two years, the creditor must prove the delivery of the money; after two

years the delivery is presumed and no proof will be heard to the contrary. (Arts. 1093-1094.)

Art. 295. Three Years Prescription.— In three years are prescribed: The fees of lawyers, arbitrators of law and fact, notaries, attorneys, legal agents, professors and teachers, doctors, surgeons, phlebotomists and midwives; wages, salaries and all kinds of remuneration for personal services; actions of merchants and shopkeepers to recover the price of articles sold to others than retailers; actions by artisans to recover the value of their work; actions by hotel, lodging and boarding-house keepers to recover for lodgings and board; civil responsibility for libel and slander, and for damages caused by persons or animals. In all such cases the prescription begins to run from the time the several services were finally rendered, the goods delivered, or the injurious act done. (Arts. 1095-1102.)

Art. 296. Five Years Prescription.— Pensions and annuities, “emphyteutic” or “censual,” rents, hire, and all other financial obligations (*prestaciones*) not collected when due, prescribe in five years from the time they are payable, whether recoverable in real or personal action. (Art. 1103.)

Art. 297. Annuities.— Prescription of certain annuities does not prejudice the right to collect future ones, so long as the right itself is not prescribed. The prescription of the capital begins to run from the day of the last payment, if no term is fixed for its repayment; otherwise, from the expiration of such term. In the “censo consignativo,” the obligation to return the capital prescribes in twenty years from the day it is legally demandable in accordance with the law on the subject of “Censos.” In cases of “emphyteutic” annuities the owner cannot prescribe the beneficial ownership against the “enfiteuta,” nor the latter the legal ownership

against the former, except by the lapse of ten years since the cause of possession has changed. (Arts. 1104–1107.)

Art. 298. Accounting.—Prescription of the obligation to render accounts begins from the termination of the administration; that to settle the account stated begins from the day of its approval by the interested parties, or by final judgment. (Art. 1108.)

CHAPTER 4.

SUSPENSION OF PRESCRIPTION.

Art. 299. Minors and Idiots.

300. Other Disabilities.

Art. 299. Minors and Idiots.—Prescription may commence and run against any person, except minors and those incapacitated by want of intelligence, unless when under guardianship according to law. Prescriptions up to those of ten years run against minors only when they had begun to run against those from whom the minor inherited or received the property; but do not run against him if they began against him during minority. The prescriptions of more than ten years run against minors over eighteen years of age. No prescription runs against those incapacitated by want of intelligence, unless it had begun against their grantors (*causantes*) or against themselves before their disability began. (Arts. 1109–1114.)

Art. 300. Other Disabilities.—Prescription cannot commence or run: Against ascendants and descendants, during the *patria potestas*, in regard to the property of the latter; between husband and wife; between minors or incapacitated persons, and their guardians and curators, during the guardianship; against persons absent in the public service, or in

active service in time of war. Nor between a married woman and a third person: in regard to dowry properties, unless begun before her marriage; in regard to the real property of the matrimonial estate alienated by the husband without the wife's consent, but only as to her interest in it; in those cases where the action by the wife against a third person may affect the husband. (Arts. 1115-1116.)

CHAPTER 5.

INTERRUPTION OF PRESCRIPTION.

- Art. 301. Causes of Interruption.
- 302. Joint Obligations.
- 303. Effect of Interruption.
- 304. Computation of Time.

Art. 301. Causes of Interruption.—Prescription is interrupted: 1, If the possessor is deprived of possession of the property or of the enjoyment of the right during one year; 2, by suit, against the possessor or the owner as the case may be, or by attachment, unless the suit is withdrawn or the defendant absolved from the demand, or the judicial act be void for want of formality; 3, by citation for certain *prejudicial* acts, and from the day of those acts, if suit is afterwards filed in the required time; and such legal steps need not be completed within the time of prescription, if they are begun within time and the plaintiff be free from fault or negligence; 4, if the person in whose favor the prescription runs expressly acknowledges, orally or in writing, or tacitly by unmistakable acts, the rights of the party prescribed. (Art. 1117.)

Art. 302. Joint Obligations.—Interruption of prescription as to one joint debtor equally affects the others; but if the creditor consents to the splitting of the debt as to one of the

joint debtors and only demands his share from him, the prescription as to the others will not be interrupted; the same rules are applicable to the heirs of a debtor, whether joint or not. Interruption of prescription against the principal debtor likewise affects his surety; and that in favor of some joint creditors inures to the benefit of all. The acknowledgment by or suit against all debtors not jointly liable is necessary to interrupt the prescription of a several obligation. (Arts. 1118–1123.)

Art. 303. Effect of Interruption.—The effect of interruption is to render unavailable (*inutilizar*) for prescription all the time which had run before the interruption. (Art. 1124.)

Art. 304. Computation of Time.—Time for prescription is counted by years, and not from moment to moment, unless expressly so provided by law. Months are counted by the number of days they contain. When prescription is counted by days, days of twenty-four hours, counted from midnight to midnight, are intended. The day on which prescription begins is always counted as whole, although not so in fact; but the last day must be complete. When the last day is a holiday, the prescription will not be complete until the end of the following day, if it be a business day (*día útil*). (Arts. 1125–1129.)

CHAPTER 6.

COMMERCIAL PRESCRIPTIONS.

(*Código de Comercio*, Arts. 1038–1048.)

Art. 305. General Rules.

306. Periods of Prescription.

Art. 305. General Rules.—Prescription of actions arising from commercial transactions is governed by the Code of

Commerce; the terms fixed are absolute and cannot be relieved against; they run against minors and persons under disabilities, except as to their recovery over against their guardians or curators.

Negative prescription begins to run from the day suit may legally be brought. Prescription is interrupted by suit or any kind of legal proceeding against the debtor, unless it is withdrawn or dismissed, by the acknowledgment of the obligation, or by the renewal of the debt; the new period begins to run from the day of acknowledgment, from the date of the new instrument, or from its maturity if the time for performance is extended by it. (Arts. 1038-1042, 1048.)

Art. 306. Periods of Prescription.—Commercial actions are prescribed as follows: In one year: 1, By retail merchants for sales on credit, the time being counted for each item separately from the date of sale, unless there are current accounts between the parties; 2, by commercial employes for their salaries, from the day of their quitting service; 3, those on contracts of land or maritime transportation; 4, those against agents of Exchange or commercial brokers on account of transactions which they conducted officially; 5, those on contracts of insurance; 6, those for services, labor, provisions or supplies of material or money for the construction, repair, equipping or victualing a ship or maintaining the crew; 7, those for costs of judicial sales of ships, cargoes, or goods shipped by land or sea, for their keeping and preservation, for navigation and port dues, pilotage, succor, assistance and salvage; 8, those to recover damages and losses from collisions and injuries.

In three years: 1, Actions on bills of exchange, drafts, notes, checks, and other negotiable instruments; 2, those on bottomry loans.

In five years: 1, Actions arising out of articles of company or partnership association, and out of the business so far as they concern the rights and obligations of the company

to its members, of the members to the company, or of the members among themselves on account of the company; 2, those against the company liquidators for their official acts.

In ten years: Actions to recover possession of a ship, even where the possessor has no title or good faith; but a captain cannot acquire a ship by prescription. In all other cases where a shorter time is not provided by the Commercial Code, the period of prescription is ten years. (Arts. 1043-1047.)

BOOK IV. CONTRACTS.

(*Código Civil del Distrito Federal*, 1884.)

TITLE I.

CONTRACTS IN GENERAL.

CHAPTER 1.

FORM AND VALIDITY OF CONTRACTS.

- Art. 307. Definition and Kinds.
308. Obligation of Contracts.
309. Validity of Contracts — Four Requisites.
310. Capacity of Parties — Ratification.
311. Mutual Consent — Acceptance.
312. Mistakes of Law and Fact.
313. Fraud — Bad Faith.
314. Duress — Threats.
315. Illegality.

Art. 307. Definition and Kinds.— A contract is an agreement by which two or more persons transfer to each other some right or contract some obligation. A contract may be *unilateral*, as where only one of the parties obligates himself, or *bilateral*, in which all the parties are obligated; it is *onerous*, when reciprocal benefits and burdens are stipulated, or *gratuitous*, when only one of the parties is benefited. (Arts. 1272–1275.)

Art. 308. Obligation of Contracts.— Contracts legally entered into obligate not only to the doing of what is expressly stipulated, but to all the consequences which, accord-

ing to their nature, are in accord with good faith, usage or law. Contracts only obligate the persons who execute them. The validity and performance of contracts cannot be left to the discretion (*arbitrio*) of one of the parties, except as expressly provided by law. (Arts. 1276–1278.)

Art. 309. Validity of Contracts — Four Requisites.—To be valid, a contract must meet the following requirements: 1, Capacity of the contracting parties; 2, mutual consent; 3, that its subject-matter is legal; 4, that it be executed with the external formalities required by law. Whatever is not contrary to law or good customs is lawful. An oath has no legal effect on a contract, and never by virtue of it or of a promise in place of it, can an obligation be confirmed, if not founded on some other legal cause. (Arts 1279–1281.)

Art. 310. Capacity of Parties — Ratification.—Every person not disqualified by law is capable of contracting, either by himself, or through another duly authorized; no one can contract in the name of another unless authorized by him or by the law. A contract executed in the name of another by one who is not his lawful representative is void unless ratified by the former before being retracted by the other party; such ratification must be with the same formalities as are required by law for the contract. (Arts. 1282–1285.)

Art. 311. Mutual Consent — Acceptance.—The consent of the parties must be clearly expressed; only those physically unable to write or speak may give their consent through other unmistakable signs. Immediately that a proposal is accepted the contract is perfected, except where the law requires some other formality; if the parties are present the acceptance will be made at the same time (*en el mismo acto*) as the proposal, unless otherwise expressly agreed; if not present, it must be within the time fixed by the proponent.

If no such time is fixed, the offer will be considered as not accepted, if the other party does not answer within three days, plus the necessary time for the regular going and return of the public mail, or if there be no mails, then a reasonable time according to the distance and the facilities of communication. The party making the offer must keep it open until the other party has time to reply within the limits just mentioned; otherwise he will be liable for all damages caused by retraction. The acceptance must be of the exact terms offered; if it involves any modification of them, it is considered as a new offer, which is subject to the same conditions for acceptance as the original offer. If without the knowledge of the acceptor, the proponent is dead at the time of the acceptance, the latter's heirs must perform the contract. (Arts. 1286-1295.)

Art. 312. Mistakes of Law and Fact.—An error of law does not annul a contract; it is only subject to correction for a material arithmetical error. Error of fact annuls a contract: 1, If it is mutual, whatever its cause; 2, if it relates to the motive or object of the contract, and it is expressed at the time of making the contract or appears from its circumstances, that it was made in reliance on the false assumption, and for no other cause; 3, if it arises from the fraud (*dolo*) or bad faith of one of the parties; 4, if it arises from the fraud (*dolo*) of a third person having an interest in the contract, in which case the latter is liable in damages to the contracting parties. (Art. 1296.)

Art. 313. Fraud — Bad Faith.—Fraud (*dolo*) in contracts is any suggestion or artifice employed in order to induce any contracting party to error or to maintain him in it; bad faith (*mala fé*) is the dissimulation of the error of one of the parties, once that it is known. (Art. 1297.)

Art. 314. Duress — Threats.—A contract procured by du-

ress (*intimidación*) on the part of one of the parties or by a third person, is void. Duress is the employment of physical force or threats which imply danger of loss of the life, honor, liberty, health, or a considerable part of the property of one of the contracting parties, of his or her spouse, ascendants or descendants. Abuse of paternal or marital authority and the like, constitutes coercion (*coacción*), but this does not annul the contract.

Vague and general expressions of the parties in regard to the advantages or disadvantages naturally resulting from the making or not making of the contract, and which do not involve deceit or duress, are not to be considered in determining fraud or force. If the duress ceases or the fraud becomes known, and the party affected ratifies the contract, he cannot in the future complain for like causes.

The nullity resulting from fraud or duress cannot be waived in advance. (Arts. 1298–1303.)

Art. 315. Illegality.—A contract whose object or conditions is physically or legally impossible is void. In respect of contracts nothing is considered physically impossible but what is absolutely so by its nature, or when the act cannot be performed by the person obligated nor by any one for him. Legally impossible are: things which are “out of commerce” by nature or law; things or acts which have no recoverable value (*de minimis non curat lex*); things of a kind which cannot be determined; and illegal acts. (Arts. 1304–1306, 1354.)

CHAPTER 2.

WAIVERS AND CLAUSES WHICH CONTRACTS MAY CONTAIN.

Art. 316. Waivers — Requisites.

317. Clauses — Penalties.

318. External Form of Contracts.

319. Interpretation — Ambiguities.

Art. 316. Waivers — Requisites.— Waivers which parties may legally make in contracts must be expressed in clear and precise terms, citing (by reference and Article) the law whose benefit is renounced; and such waivers can only extend to cases embraced in the provision which is waived. A waiver which is prohibited by law is void. (Arts. 1307–1309.)

Art. 317. Clauses — Penalties.— Parties may insert such clauses as they desire; but those relating to the essential requisites of a contract or its natural consequences will be implied though not expressed, unless the latter have been waived in accordance with law. The parties may stipulate for a certain penalty for the non-performance of the contract, in which event no claim for damages (*daños y perjuicios*) lies; but the penal clause cannot exceed the amount of the principal obligation; and if the latter is partially performed the penalty will be reduced in proportion; and if the exact proportion cannot be determined, the judge will reduce the penalty in an equitable manner in view of all the circumstances. The creditor may enforce the contract or the penalty, but not both, unless otherwise agreed; the nullity of the contract implies that of the penalty, but that of the penalty does not affect the contract. The penalty cannot be enforced if the performance of the contract is prevented by the act of the creditor, by fortuitous circumstances, or by insuperable force (*vis major*). In joint obligations with penal clause, violation by one of the heirs of the debtor incurs the penalty,

which may be enforced against any of the co-heirs, if upon notice they do not redeem it by performing the obligation; in this case the party paying is entitled to contribution from the others. If the obligation is not joint, the same rules apply; but if the creditor accepts part payment from some of the co-heirs, it must be deducted from the penalty when the one at fault is sued. (Arts. 1310–1321.)

Art. 318. External Form of Contracts.— Every contract on time for more than six months and for an amount exceeding two hundred *pesos*, to be valid must be in writing, either by executing the contract itself in a private document, or by giving a receipt or other written evidence, unless otherwise specially provided by law. If the payments stipulated in the contract are periodical, its amount will be estimated by one year's payments. If any party cannot write, his name may be signed by another at his request before two witnesses. No contract requires for its validity other external formalities than expressly prescribed by law. (Arts. 1322–1323.)

Art. 319. Interpretation — Ambiguities.— A contract is void when the intention of the parties in regard to its principal object cannot be gathered from its terms. Although the ambiguity relates to accidental circumstances of the contract, if they are such as from its nature the contract would not have been made without them, it is void. If the contract is “gratuitous,” the doubt will be resolved in favor of the least transmission of rights; if “onerous,” in favor of the greatest reciprocity of interests. (Arts. 1324–1325.)

CHAPTER 3.

THE DIFFERENT KINDS OF CONTRACTS.

Art. 320. Definitions — Conditions.

321. Same — Fulfillment.

322. Alterations in *Res* pending Fulfillment.

Art. 323. Election of Remedies.

324. Rescission — Rights of Third Persons.

325. Contracts on Time.

326. When Demandable before Maturity.

Art. 320. Definitions — Conditions.— A personal obligation is one which only binds the contracting party and his heirs; a real contract is one which affects the *res* itself and any possessor of it. It is *pure* when its performance does not depend on any condition; and *conditional* when it depends on a future and uncertain event, or upon a past event not known to the parties. The condition is *suspensive* when it suspends the performance of the obligation until the event happens or not; it is *resolutory* when upon being complied with it releases the obligation and restores the former order of things. It is *casual* when it depends entirely on chance or the will of a third person not interested in the contract; it is *potestative* or *voluntary* when it depends wholly on the will of one of the parties; and *mixed* when it depends jointly on such will and on the happening of an event beyond their will. Conditions physically or legally impossible avoid a contract. (Arts. 1326–1334, 1354.)

Art. 321. Same — Fulfillment.— Upon the fulfillment of any condition on which a contract depends, the contract will be considered as perfected as of the date of its execution; but when it appears that the condition cannot be fulfilled, the condition will be considered as not verified; but if the fulfillment is prevented by the act of the party, it will be held as fulfilled unless such act was unintentional. The rights and obligations of parties dying before fulfillment of the conditions pass to their heirs. Creditors under conditional contracts may use the lawful means necessary to preserve their rights before the condition is fulfilled; and the debtor may recover whatever he may have paid in the meanwhile; but cannot recover advance payments under contracts on time. (Art. 1359). (Arts. 1335–1339, 1359.)

Art. 322. Alterations in Res Pending Fulfillment.— If pending the fulfillment of conditions, the subject-matter of the contract be lost, damaged or even bettered, the following rules are observed: Pending suspensive conditions, if the thing be lost or damaged through fault of the debtor, he must indemnify the loss, and in case of damage the creditor may at his option have indemnity or rescind the contract; but if lost or damaged without his fault, the creditor must bear it. If the thing is bettered by its nature or by time the creditor is entitled to the advantage; but if the improvement is at the expense of the debtor the rules as to usufructs apply.¹ If the condition is resolutive, upon its fulfillment anything received under the contract must be restored, with its products and interest, by the party failing to perform his obligation; the same rules as above stated applying in cases of loss, damage or betterment. The resolutive condition is always implied in bilateral contracts in the event one of the parties does not perform his obligation. (Arts. 1340–1349.)

Art. 323. Election of Remedies.— The injured party may elect between enforcing the performance of the obligation (specific performance), or rescinding the contract and recovering compensation in damages with interest; and he may adopt the latter remedy although having elected the former, the specific performance of the obligation was not possible. (Art. 1350.)

Art. 324. Rescission — Rights of Third Persons.— The rescission of a contract by reason of non-payment by the purchaser of real property or real rights upon it, shall not affect a third person in good faith, unless expressly so stipulated, and unless the contract has been duly recorded in the public register. In respect of personal property, a third person acquiring it in good faith is never affected by such rescission, regardless of any stipulation about it. If the rescission is brought about fraudulently by a

¹ See Art. 258.

third person on whom it depends, it will be held as not rescinded. Conditions physically or legally impossible annul a contract dependent on them. (Arts. 1351-1354.)

Art. 325. Contracts on Time.—A contract on time is one for the performance of which is fixed a day certain, which is one which necessarily must come; if there is uncertainty as to its coming the contract is conditional, and governed by the rules on that subject. The time is computed in the manner stated in Art. 304. Anything paid in advance cannot be recovered. Time provided in a contract is presumably for the benefit of the debtor unless it appears that it is also in favor of the creditor. (Arts. 1355-1360.)

Art. 326. When Demandable Before Maturity.—When a debtor becomes bankrupt or notoriously insolvent, or without the creditor's consent diminishes the securities given, the performance of the contract may be enforced before maturity; but in case there are various debtors severally liable, only the one coming within the above cases may be proceeded against. (Arts. 1361-1362.)

CHAPTER 4.

CONJUNCTIVE AND ALTERNATIVE OBLIGATIONS.

Art. 327. How Performed.

328. Loss of *Res* — Election.

329. Election between Alternatives.

Art. 327. How Performed.—One obligated to several acts or things jointly must perform them all; if to one of two acts or things, he may perform either, but he cannot against the will of the obligee partially perform each. If one of the alternatives cannot be legally done the other must be performed; the obligor has the right of election unless otherwise agreed. (Arts. 1363-1366.)

Art 328. Loss of Res — Election.— When the obligor has the election, and either of the things is lost through his fault or by accident, the obligee must accept what remains; if both things are lost by his fault the obligor must pay the value of the last one lost; but if lost by accident the obligation is discharged. If the obligee has the right of election, and one of the things is lost through the fault of the obligor, the former may demand the other thing or the value of the one lost; but if lost without the obligor's fault, the obligee must accept the other; if both are lost through the obligor's fault, the obligee may recover the value of either, with damages, or rescind the contract. If both things are lost without fault of the obligor, and the election has already been made, the loss will be borne by the obligee; if not yet made, the contract is rescinded. If the obligor has the election, and one of the things is lost through the fault of the obligee, the former may be released or may rescind the contract and recover damages; if the obligee has the election, the obligation is satisfied by the loss; and if both things are lost by his fault, he may pay the value of whichever he prefers; if the obligor has the election he will choose the value of one; and in either case the obligee will pay damages. (Arts. 1367–1378.)

Art. 329. Election Between Alternatives.— When the obligee in alternative contracts for acts or things has the election he may require either; when the obligor has the right he may perform or give either; if the obligor refuses to do the act, the obligee may require the thing or the doing of the act by a third person, as provided in Art. 338. If the thing is lost by the fault of the obligor, the obligee having the election may require its value or the doing of the act; but if lost without the obligor's fault, the obligee must accept the doing of the act. Whether lost through the obligor's fault or not, if he has the election, the obligee must accept the

doing of the act. If the thing is lost or the act is not performed through the fault of the obligee the obligation is discharged. Failure to perform acts is governed by the provisions contained in Arts. 338 and 339. (Arts. 1379-1387.)

CHAPTER 5.

“MANCOMUNIDAD” OR JOINT-INTEREST.

Art. 330. Definition — Kinds

331. Heirs and Representatives.

332. Presumption of Mancommunity.

333. Discharge of Liability.

334. Contribution.

335. Release of one Joint-Debtor.

Art. 330. Definition — Kinds. — “Mancomunidad,” or joint interest, is either “active” or “passive.” Active mancommunity is the right which two or more creditors have, each one for himself, to require of the debtor the entire performance of the obligation; passive mancommunity is the obligation which two or more debtors have to perform, each one for himself, the entire obligation of the contract. Joint contracts (*mancomunados*) are joint and several (*solidarios*) as respects both creditors and debtors; joint creditors and debtors are also called several (*solidarios*). (Arts. 1388-1391.)

Art. 331. Heirs and Representatives.— In respect of the estates of deceased persons the following are joint creditors (*mancomunados*): 1, The heirs of a joint creditor; 2, executors named jointly by the testator; 3, the heirs and legatees to whom an inheritance is given jointly without stating their several interests; 4, all persons called simultaneously to the same inheritance, where there is no executor, and so long as there is no partition. (Art. 1393.)

Art. 332. Presumption of Mancommunity.—Active mancommunity is never presumed in contracts, but must be expressly provided for; otherwise, the debtor is only obliged to respond to each creditor for his proportionate part, and if this does not appear, he is only subject to a joint action by them all, or by their lawful representative. Passive mancommunity is not presumed: 1, When the obligation is for the delivery of money or other thing consumable in the use (*fungible*); 2, when it is for the performance of an act or of a work, which in its final result may be obtained by the action of one person or the coöperation of several, but independently of each other; in these cases mancommunity can only exist by express agreement. But it is presumed: 1, When the obligation is to give some specific thing not admitting of division, or although divisible, where the sum of the parts furnished separately is of less value than that of the thing as a whole; 2, when two or more persons inherit from a several debtor; 3, when the obligation consists of the performance of an act or work which can only be obtained by the simultaneous action of all the obligors; in all which cases the “solidarity” can only be avoided by express agreement. (Arts. 1392, 1394–1397.)

Art. 333. Discharge of Liability.—The debtor of several joint creditors is discharged upon payment to any of them, unless he has been sued by some one, in which case payment must be made to the plaintiff after hearing the others, the creditor receiving payment being bound to pay his co-creditors the part due them by agreement or by law. The obligation to the joint-creditor is discharged not only by actual payment, but by set-off, novation or release; but however it is discharged, he must satisfy his co-creditors. Active mancommunity does not exist when a creditor appoints one or more persons to only receive payment in his name, they being in such case only “mandataries” or agents of the creditor, and their liabilities governed by the rules of “mandate.”

The creditor of several joint and several debtors may enforce their liability pro rata or may demand it all of any one of them, and the one sued cannot claim the benefit of "división"; if the one sued be insolvent, the others may be then sued; and he may sue the others for the balance due although he had consented to "división" in favor of the first one or had sued him for his share. (Arts. 1399-1405.)

Art. 334. Contribution.—If the thing involved is lost through the fault of one of the joint and several debtors, the others are not released, and the one causing the loss is responsible for it and for damages, both to the creditor and to the other obligors. The joint debtor who pays for the others is entitled to be reimbursed by them according to their interest; and if any of them is insolvent, the payment of his share will be divided among the others, including any whom the creditor may have released from joint-liability. The heirs of a joint-debtor are liable in the same way up to the amount they have received, if all of them are solvent; if only some are solvent, the payment will be divided among them proportionally; and if only one of them is solvent, he must pay the debt up to the amount he has received; those making the payment retain their right of contribution against the others until their fortune improves.

Each of the heirs of a joint creditor may enforce the entire performance of the obligation, being bound to satisfy his co-creditors, as provided in the preceding Article. When by reason of the non-performance of the obligations as to which passive mancommunity is presumed, in clauses 1 and 2 of Art. 332, the interest of the creditor is appraised in a specific amount, all the debtors will be jointly liable for it; and when one heir of the debtor has been sued for the entire obligation, under clause 2, he may bring his co-heirs into the same case and have judgment rendered against them for performance on their part. If the obligation is such that it can be performed by only the heir sued, he may alone be

required to pay it, retaining his right to require contribution of the others. (Arts. 1406–1407, 1412–1418.)

Art. 335. Release of One Joint-Debtor.—The release of the debt made by the creditor to one of the joint debtors, does not extinguish the obligation as to the others, when such release is limited to a part of the debt or to a specified debtor; and agreements made by the creditor with one of the joint-debtors in regard to the debt do not affect the others, except as stated in Art. 374. If the subject-matter about which the debt was jointly contracted concerns only one of the joint-debtors, he will be responsible in its entirety to his co-debtors, who, so far as he is concerned, are considered only as his sureties. The joint-debtor who is sued may interpose not only the defenses which concern himself personally but those also which are common to all the joint-debtors. (Arts. 1408–1411.)

CHAPTER 6.

THE PERFORMANCE OF CONTRACTS.

Art. 336. Of Performance.

- 337. Assignability of Contracts.
- 338. Non-Performance of Acts — Liability.
- 339. Demand — Liability.
- 340. Delivery of Things — Risks of Loss.
- 341. Delivery — Passing of Title.
- 342. Default — Effects.
- 343. Loss of *Res* — Negligence.
- 344. Remedies of Creditor.
- 345. Payments — Application of.
- 346. Money — Mexican and Foreign Money.

Art. 336. Of Performance.—Contracts may consist either in the performance (*prestación*) of acts, in the delivery (*prestación*) of things, or in both; and when legally made must be punctually performed; they can neither be rescinded

nor altered except by mutual consent of the parties, save as otherwise provided by law. The obligor who fails to perform his obligation may be judicially compelled by the other party to its performance or to the rescission of the contract, who in either event may recover his losses and damages. If several are obligated to perform the same thing, each one must contribute proportionally, unless otherwise provided in the contract, except where they are severally liable, or where the specific property is in the possession of one of them, or when only one can perform the act. (Arts. 1419, 1421-1422, 1457.)

Art. 337. Assignability of Contracts.—The rights and obligations, arising from contracts, may be assigned *inter vivos* or transmitted by succession, where they are not purely personal by their nature, by the terms of the contract or by disposition of law. (Art. 1420.)

Art. 338. Non-Performance of Acts — Liability.—The obligor who fails to perform the act to which he is obligated, or does not perform it as agreed, shall be liable for losses and damages; or the obligee may demand that the act be performed by another, if it is possible, at the cost of the obligor; and if the act is performed, but not in the manner agreed, the obligee, besides the above rights, may require that the badly done work be destroyed. The same rules apply where the obligation is to not do a thing, and it is done in contravention of the agreement. (Arts. 1426-1428.)

Art. 339. Demand — Liability.—If the obligation is on time, the liability accrues upon its expiration; if not on a fixed time, the liability accrues only from the day of "*interpelación*," which is the act by which the creditor demands of the debtor the performance of his obligation; the same rules are applicable to the delivery of things, except as to the payment of money without interest, in which case damages,

not to exceed legal interest, are recoverable only from the date of demand. Demand must always be made before a Notary or before two witnesses. (Arts. 1423-1425, 1432-1433.)

Art. 340. Delivery of Things — Risks of Loss.— One obliged to deliver a thing must preserve it with reasonable care and diligence, and deliver it under the civil responsibility fixed in Arts. 347 to 353. From the completion of the contract by the consent of the parties, the thing is at the risk of the creditor, though not yet delivered, unless lost or damaged by the fault of the debtor while in his possession, in which case the loss is his. Where the contract for delivery of property does not involve the transfer of ownership, the risk is always with the owner except when the other party is at fault. (Arts. 1429-1431, 1450.)

Art. 341. Delivery — Passing of Title.— Delivery of things may consist: In the transfer of ownership in certain property; in the temporary conveyance of the use or enjoyment of certain property; in the return of another's property or the payment of what is due. In the transfer of specific property, the title passes between the parties by the mere effect of the contract, without either actual or symbolic delivery, except as otherwise agreed; where the property is not determined, the title does not pass until the moment that the property is ascertained and determined with the creditor's knowledge. If the quality of the thing is not specified, the debtor fulfills his contract by delivery of a medium quality. (Arts. 1435-1438.)

Art. 342. Default — Effects.— In reciprocal obligations neither party is in default if the other does not perform or is not ready to perform on his part. If the debtor is in default, he is liable in damages, as provided in Arts. 347 to 353, even where he is bound to perform in "fortuitous cases"; but

where he has not so obligated himself, the obligation is discharged if it is proven that the thing would have been lost even if in the possession of the creditor. If lost while in the debtor's possession it is presumed to be through his fault unless proven to the contrary. Where the obligation to deliver a certain thing arises from crime or fault, its loss does not in any event relieve the debtor from paying its value, unless he had previously offered it to the party entitled. If the thing is lost without the debtor's fault, he must assign to the creditor all rights of action he may have against whoever is responsible for the loss. (Arts. 1434, 1439-1444.)

Art. 343. Loss of Res — Negligence.— Loss occurs either through the destruction of the thing, or its disappearance so that it cannot be found or recovered. Fault or negligence is imputable where the obligor does any act destructive of the property or fails to do those necessary to preserve it, the fact to be determined in the sound discretion of the judge in view of all the circumstances. In contracts of sale with reservation of the possession, use or enjoyment of the property until a certain time, liability for its loss, unless otherwise provided, will be upon the party at fault; if lost wholly or partially, without fault of either, in the absence of any agreement, each party will bear his own loss, which, if only partial, and the parties cannot agree upon sharing it, shall be determined by experts. (Arts. 1445-1448.)

Art. 344. Remedies of Creditor.— If the property transferred by the contract be conveyed by the obligor to a third person before delivery to the obligee, the latter may recover it as provided in Art. 475. If the obligation be for the payment of money the damages for failure to deliver shall not exceed the legal interest unless otherwise provided; where the amount is partly liquidated and partly unliquidated, the creditor may demand the former without prejudice to his rights to the latter. (Arts. 1449-1452.)

Art. 345. Payments — Application of. — Payments of money must be in the kind of money contracted, or if this is not possible, then in the amount of current money equal to the actual value of the money owed.¹

A debtor owing several debts to the same creditor may declare at the time of making a payment to which of them he wishes it applied. If he fail to make such declaration, the payment shall be taken as applied to the most onerous of such as are overdue; if in equal circumstances, then on account of the oldest; and if all are of the same date, then it is to be applied *pro rata* to them all. (Arts. 1453–1456.)

Art. 346. Money — Mexican and Foreign Money. — The basis of mercantile money, in which all commercial operations and foreign exchange must be based, as well as contracts made and drafts drawn in foreign countries to be performed or paid in Mexico, is the Mexican “Peso.” No one is obliged to receive foreign money, which shall have no other value in Mexico than its market value. Foreign paper, bank bills and bonds cannot be the subject of mercantile transactions in Mexico, except as simple merchandise, but may be the subject of purely civil contracts. (Cod. Com. Arts. 635–639.)

CHAPTER 7.

CIVIL RESPONSIBILITY.²

Art. 347. When Incurred — Effects.

348. “Daños y Perjuicios” — Definition.

349. Measure of Damages — By Whom Recoverable.

350. Damages for Defects and Negligence.

351. Interest — Costs.

352. Prescription.

353. Administrative Regulations.

Art. 347. When Incurred — Effects. — Civil responsibility

¹ Repealed; see, *post*, Art. 1118.

² See Arts. 1010–1029 for Civil Responsibility for torts, under Penal Code.

arises from the failure to perform a contract, and from acts or omissions expressly declared subject to it by law. The party who fails to perform his contract, either in substance or manner, is liable for the losses and damages (*daños y perjuicios*) caused to the other party, unless the failure is caused by the act of the latter, by *vis major* or by accident (*caso fortuito*), to which he has in no manner contributed. Responsibility arising from fraud (*dolo*) exists in respect to all contracts; any stipulation to waive in the future the right to exact such responsibility is void. No one is liable in case of accident (*caso fortuito*) unless he has caused or contributed to it, and when he has expressly accepted such responsibility. The civil responsibility treated in this chapter not only involves the return of the property or its value, or both as the case may be, but likewise the reparation of damages (*daños*) and compensation for losses (*perjuicios*). (Arts. 1458–1463).

Art. 348. “Daños y Perjuicios”—Definition.—By “*daño*” is meant the loss or detriment which the party suffers in his estate by the failure to perform the contract; “*perjuicio*” is the deprivation of any lawful profit which should have been obtained by the performance of the contract. The “losses and damages” must be the direct and immediate consequence of the default in the performance of the obligation, either already accrued or which must necessarily accrue therefrom. (Arts. 1464–1466.)

Art. 349. Measure of Damages — By Whom Recoverable.—If the thing is lost or so badly injured that it cannot be used for the purpose intended, the measure of damages is its full value at the time of its return, unless another time is agreed upon; if the injury is less, compensation for it shall be made upon the restitution of the property, taking into consideration not only its decreased value, but the necessary expense of its repair. In determining the value of a thing, and the

injury done to it, its sentimental value is not to be regarded, unless it appears that it was destroyed or injured with the intention of hurting the feelings of the owner, in which case the increased damages cannot exceed one-third of its actual value. The civil responsibility of the parties may be regulated by agreement except where the law otherwise provides; it can only be enforced by the party who has the right to enforce the performance of the contract, and by him in whose favor the law expressly establishes it. Where several persons are civilly responsible, the rules governing joint obligations (*obligaciones mancomunadas*) apply, if such were the basis of the contract; otherwise each one is responsible for his part. If damage is caused to individuals, or their property is taken, in order to save a town, it shall be compensated as provided in Art. 27 of the Constitution. (Arts. 1467-1475.)

Art. 350. Damages for Defects and Negligence.—The owner of a building is liable for damage caused by its collapse, if due to defects of construction or negligence in its repair, the architect being responsible in the first case to the owner; for damages caused by the partial fall of any building, or trees, or any other object which he owns; for those caused by the breaking of canals and dams, the construction and repair of buildings, and for damages caused by any act lawful in itself, but in the execution of which there has been fault or negligence; civil responsibility lies likewise for damage caused by industrial establishments, by reason of the weight and movement of the machinery, or by deleterious exhalations, by the agglomeration of materials or animals injurious to health, or by any other cause really prejudicial to the neighbors; these matters are subject to the police regulations; the damages caused by animals being governed by the Penal Code, as also is liability for acts done by another, in the absence of special provisions of the Civil Code.³ (Arts. 1476-1481.)

³ See Arts. 1010-1029.

Art. 351. Interest — Costs.— Where interest is not fixed in a contract, but according to the judgment it should be paid, it will be taxed at six per cent. per annum. The payment of judicial costs will be imposed on the party failing to perform his contract, in the terms established by the Code of Procedure. (Arts. 1482–1483.)

Art. 352. Prescription.— Civil responsibility prescribes with the obligation for the failure to perform which it arises. That arising from the acts of other persons and of animals prescribes in three years from the time the injury was done or became known. (Arts. 1484–1485.)

Art. 353. Administrative Regulations.— Besides the foregoing provisions, which will be observed in all cases not governed by some special provision of the Code, the administrative regulations not inconsistent with the same will also be observed. (Arts. 1486–1487.)

CHAPTER 8.

OF WARRANTY. (EVICCIÓN Y SANEAMIENTO.)

Art. 354. Explanatory.

355. Eviction and Compensation.

356. Waiver — Effects.

357. Judgment — Damages.

358. Same — Rules of Compensation.

359. When Grantor not Liable.

Art. 354. Explanatory.— The words “*evicción y saneamiento*” are of such frequent occurrence in the Mexican law of contracts, and are so frequently misunderstood as well as confused in meaning, that a brief explanation of their meaning and use may be made. In a general way they signify what we understand by a warranty of title and pos-

session; the "*evicción*" being the judicial dispossession of a grantee by a superior title set up by a third person, and "*saneamiento*" is the legal obligation of the grantor to make good to his grantee the damages sustained by being dispossessed. (Eseriche Mexicano, *voc.* "*Evicción*"; see, *post*, Art. 479.)

Art. 355. Eviction and Compensation.—*Evicción* occurs when a grantee of any thing is deprived wholly or in part of it by a final judgment by virtue of some right prior to his acquisition. The grantor is bound to make good the loss although not provided in the contract; and where the property has belonged successively to several owners, each one is bound in the same way to his immediate grantee and has the right to demand compensation (*saneamiento*) of his grantor, as provided in this chapter. (Arts. 1488–1490.)

Art. 356. Waiver — Effects.—The parties may by agreement increase or diminish the compensation for *evicción* or waive it altogether; such waiver must be in precise terms and specifying the rights waived; but such waiver is void if the grantor is guilty of bad faith. When the right of compensation is waived by the grantee, the grantor in case of eviction must only return the price of the thing, according to the next Article, unless the grantee took with knowledge of and subject to the risks of eviction, in which case the grantor is discharged. (Arts. 1491–1494.)

Art. 357. Judgment — Damages.—The grantee must give his grantor notice of the suit of eviction, before submission if on a question of law, or before taking proofs, if on a question of fact. The judgment rendered binds the grantor, if he acted in good faith, to repay the full amount of purchase-money he has received, with any costs occasioned to the grantee by the contract, and all the costs of the suit of eviction and of that for compensation (*saneamiento*), besides

the value of useful and necessary improvements, unless in the judgment the other party is charged with them. Besides the above compensation, the grantor, if he acted in bad faith, or does not promptly defend the suit of eviction, must pay the value of the property either at the time of the transfer or of the eviction, at the election of the grantee, pay the value of voluntary and pleasurable improvements made by the latter, and all losses and damages suffered. If both parties acted in bad faith, the grantee is not entitled to any compensation. (Arts. 1495-1500.)

Art. 358. Same — Rules of Compensation.— If the grantee be adjudged to restore the “fruits” of the property, he may recover their value, or legal interest on the price he has paid, from the grantor, otherwise, the one is a set-off against the other. If the grantor, upon being summoned, declares that he has no defense and deposits the price because the grantee refuses to accept it, he is discharged from all responsibility thereafter. Any depreciation the property may have suffered will be borne by the party who caused it; if the grantee has derived any profit from the deterioration, its amount will be deducted from the compensation. Improvements made by the grantor prior to the transfer will be credited on what he must pay, if they were utilized by the successful litigant. Where the grantee is only deprived of a portion of the property, or of one of several things included in one contract in which the value of each is not fixed, he may have compensation for the loss or may rescind the contract; in the latter case he must return the property free from any encumbrance he may have put on it.

If the grantor, upon notice of or pending the suit, admits the right of the claimant, and undertakes to pay as herein provided, he is only liable for costs up to the time of his acknowledgment, however the suit may result.

If the estate conveyed be found encumbered by any voluntary charge or easement not apparent or not mentioned in the

conveyance, the grantee may recover compensation or rescind the contract. Actions for rescission under the preceding Article prescribe in one year from the perfecting of the contract, and those for compensation in one year from the time when the grantee has notice of the encumbrance. (Arts. 1501-1512.)

Art. 359. When Grantor not Liable.—The grantor is not liable for eviction: Where the right has been waived, or the risks accepted, or the grantee fails to give notice of the suit, as above provided; if the grantee knew of the outstanding claim and fraudulently concealed it from his grantor; if the eviction be for some act subsequent to the transfer not imputable to the grantor, or through the act or fault of the grantee, whether before or after the transfer; where the grantee and the claimant settle or compromise the claim by arbitration without the consent of the grantor. (Art. 1513.)

CHAPTER 9.

THE EXTINCTION OF OBLIGATIONS.

Art. 360. Payment—Kinds and Time of.

- 361. Place of Payment—Rules.
- 362. Delivery—Part Payments.
- 363. Payment—By Whom Made.
- 364. Payment—To Whom Made.
- 365. Payment by Mistake.
- 366. Tender of Payment and Deposit.

Art. 360. Payment—Kinds and Time of.—Payment or performance is the delivery of the amount or thing, or the rendering of the service, contracted for; the debtor cannot require the creditor to accept anything different, although of equal or greater value than that due. It must be done within the time stipulated, unless the law expressly provides otherwise; if no time has been fixed, it must then be when required by the creditor, provided such time has elapsed as is

morally necessary for the performance of the contract.

Where the payment is to be made when the debtor is able, his ability must be proven. Any extension of time granted to a debtor, in a suit or outside, only binds the creditor granting it, another refusing it may proceed to enforce his demands. (Arts. 1514-1519.)

Art. 361. Place of Payment — Rules.— In every contract the place where the debtor must be required to make payment shall be expressly stated; if the place is not stated, it is to be determined as follows: If the subject-matter of the obligation is specified personal property (*muebles*), payment will be made in the place where the property was when the contract was made; in all other cases the domicile of the debtor is to be preferred, whatever the form of action; if he have no fixed domicile, the place where the contract was executed is preferred in case of a personal action, and the place where the property is located, if a real action, except where otherwise provided by law. If the debtor voluntarily change his domicile after the contract, he must indemnify the creditor for any increased expenses caused thereby. (Arts. 1520-1521, 1523.)

Art. 362. Delivery — Part Payments.— The expenses of delivery are to be borne by the debtor unless otherwise agreed.

The delivery of real property (*inmuebles*) is effected by the delivery of the deed of conveyance of it.

Payment must be in the manner agreed, and cannot be made partially unless by express agreement or allowed by law. If the debt is in the form of annuities (*pensiones censuales*) or other amounts payable periodically, and the payment of the last three installments is proven by writing, the payment of the preceding ones is presumed in the absence of contrary proof. (Arts. 1522, 1524-1526.)

Art. 363. Payment — By Whom Made.— Payment made

with property of another, or with the debtor's own if he has not the legal capacity to dispose of it, is void; but if it consists of a sum of money or other consumable thing, it cannot be recovered from a creditor who has consumed it in good faith. The payment may be made by the debtor himself, by his representatives, or by anyone interested in the contract; also by a third party not interested in the performance of the contract, with the express or presumed consent of the debtor, such payment being governed by the rules relative to "mandate"; it may also be made by a third person without the knowledge of the debtor, in which event the rules relative to subrogation, assignment and sureties apply in their respective places; and it may be made against the will of the debtor, in which case it cannot be recovered from him. The creditor is not bound to accept payment from a third person, where the contract contains a provision to the contrary, or where he may be prejudiced thereby. The obligation to render some service may be performed by a third person, except where it is expressly stipulated that the obligee is to perform it personally, or where he is chosen for his special knowledge or personal qualities. (Arts. 1527-1536, 1538.)

Art. 364. Payment — To Whom Made.— Payment must be made to the creditor himself or to his lawful representative; if made without the legal requisites to a person under disability to administer his property, it is only valid so far as it may have been to his advantage. Payment made to a third person does not extinguish the obligation unless so stipulated or consented to by the creditor or the law so provides. Payment to the creditor by the debtor after he has been judicially ordered to retain the debt is void. Payments in fraud of creditors are governed by the same rules applicable to contracts in fraud of creditors. Payments in "mancommunity" come within the provisions of the chapter on that subject. (Arts. 1537, 1539-1544.)

Art. 365. Payment by Mistake.—Where through mistake of fact one pays what he does not really owe, he may recover it as provided in the preceding Article. The person who receives such payment in good faith must restore it, but without interest; if the thing received is certain and determined, it must be returned in kind if it exists, but the possessor is not liable for any injury or loss, even where it occurred through his fault, unless he profited by it. If he has sold the thing he need only restore the price which he received or assign his right of action to recover it; but a gift of it is not valid, though the donee's liability is limited by the rules just stated. If the payment is received in bad faith, it must be returned with interest from the time received; if it be of a specific thing, it must be returned in kind, together with its products, and he is also liable for the "*daños y perjuicios*," and for the loss or injury of the property, all as provided in Art. 253; and if he has transferred it to another who received it in bad faith, the owner may recover it with "*daños y perjuicios*" from either; but if the transferee received it in good faith it cannot be recovered unless the transfer to him was gratuitous or the transferrer is insolvent. In the first case, the owner may recover "*daños y perjuicios*" from the transferrer, reserving this right, in the second case, until the insolvent's condition is improved. Betterments are governed by the rules on that subject in Art. 253. (Arts. 1545–1555.)

Art. 366. Tender of Payment and Deposit.—Tender of payment, followed by deposit, is equivalent to payment, if it complies with the legal requirements of the latter. If the creditor refuse without just cause to receive the payment or give the proper receipt, or be an uncertain person or incapable of receiving it, the debtor may discharge himself by depositing the thing due, the creditor being cited, if he is known, for a time and place certain, to receive the payment or witness the deposit, or if unknown, notice to be given by publi-

cation for the time fixed by the judge; and if the creditor is absent or incapacitated, the notice will be given to his legal representative. If he fail to appear in person or by attorney with proper powers, or shall refuse to receive the thing, the judge shall make a certificate reciting the circumstances; and the debtor may thereupon ask for a judicial deposit, which the judge shall order after a summary hearing of the creditor as provided in the Code of Procedure. If the rights of the creditor are doubtful, the deposit may be made and he be cited to establish his rights.

The thing deposited remains at the risk of the creditor. If the judge sustains the creditor's objections, the tender and deposit are ineffectual; but if the deposit is approved the obligation is extinguished in all its effects. Before acceptance by the creditor or before judgment is rendered, the debtor may withdraw the deposit, the obligation continuing in full force; but after judgment it cannot be withdrawn except with the creditor's consent, in which event he loses his lien on the thing, and any co-debtors and sureties are discharged if the withdrawal was without their consent. All the costs are against the creditor where the tender and deposit have been legally made. (Arts. 1556-1569.)

CHAPTER 10.

SET-OFF. (COMPENSACIÓN.)

Art. 367. When Available — Effect.

368. When Not Available.

369. Rules of Set-off.

370. Assigned Debts.

Art. 367. When Available — Effect.— Set-off (*compensación*) occurs when two persons are reciprocally and in their own right debtor and creditor, the two debts being thus extinguished by law to the extent of the amount of the smaller. It does not take place except when both debts are

for money, or when, being for consumable things, they are of the same kind and quality, where these are determined in the contract. The debts must likewise both be liquidated and demandable; by "liquid" meaning of amount certain or ascertainable in nine days, and by "demandable," a debt whose payment cannot be lawfully refused; those not of this character are not subject to set-off except by express consent of the parties. Where set-off is had of debts of unequal amounts, suit lies for the balance. (Arts. 1570-1576.)

Art. 368. When Not Available.—Set-off does not occur: Where one of the parties waives it; where one of the debts is based on a judgment for damages for a tort (*despojo*), as this must be paid notwithstanding set-off is pleaded; where one of the debts is for "alimentos" or support; where the debt is for a thing not subject to set-off, unless both are equally privileged; if the object of the debt be deposited, or the debt is fiscal or municipal, except where the law so allows. (Art. 1577.)

Art. 369. Rules of Set-off.—Set-off is effective immediately that it is legally made and extinguishes all correlative obligations. Where a person pays a debt which is subject to set-off, he cannot, when he demands the debt due him, avail himself to the prejudice of third persons, of liens or mortgages which he held at the time of payment, unless he proves that he was ignorant of the existence of the credit which extinguished the debt. If there are several debts subject to set-off, the rules governing application of payments will be observed in the absence of declaration. The right of set-off may be waived, either expressly or by acts clearly indicating the intent to waive it. A surety cannot, before being sued by the creditor, set off against the surety debt a debt owed him by the creditor. A surety may avail himself by way of set-off of what the creditor owes to the principal debtor, but the latter cannot plead set-off of what the creditor owes to the surety; nor can a

joint-debtor set off the debt of the creditor to his co-debtor. Debts payable in different places may be set off by allowing for the cost of transportation or exchange to the place of payment. Set-off cannot be allowed to the prejudice of the lawfully acquired rights of third persons. (Arts. 1578–1584, 1588–1589.)

Art. 370. Assigned Debts.—Where the debtor consents to the assignment of the debt by the creditor to a third person, he cannot plead against the assignee set-offs which he may have against the assignor; but if he refused his consent upon being notified of the assignment, he may set off any claims prior to the assignment; and if made without notice to him, he may set off claims both prior to the assignment and arising up to the date that he had knowledge of it. (Arts. 1585–1587.)

CHAPTER 11.

SUBROGATION.

Art. 371. Legal and Conventional.

372. Rules of Subrogation.

Art. 371. Legal and Conventional.—Subrogation is *legal*: When one creditor pays off another who has a preference; when the one paying has an interest in the performance of the obligation; when the payment is made with the express or tacit consent of the debtor; when an heir pays with his own means a debt of the estate; when a purchaser of real estate pays off a creditor holding a debt secured by mortgage antedating the purchase; in such cases the subrogation is by operation of law without the necessity of any declaration being made by the parties. *Conventional* subrogation takes place where the creditor receives payment from a third person, and by express declaration made at the time, subrogates him to all his rights against the debtor. (Arts. 1590–1592.)

Art. 372. Rules of Subrogation.— If the debtor borrows money with which to pay the debt, the lender may be subrogated to the rights of the creditor where the loan is evidenced by an “authentic” document reciting that the loan was made for the payment of the debt; otherwise the lender has only such rights as his contract may give him. Where the creditor is only paid in part, his rights in the enforcement of the balance are superior to those of the party subrogated; such preference belongs only to the original creditor or his assignees. Partial subrogation is not allowed as to indivisible debts. Where the credit is not sufficient to pay in full several persons who have been subrogated to different portions of it, they shall be paid according to priority of subrogation. The person subrogated may exercise all the rights which the creditor has both against the debtor and his sureties. (Arts. 1593–1598.)

CHAPTER 12.

MERGER. (CONFUSIÓN DE DERECHOS.)

Art. 373. Fusion of Rights.

Art. 373. Fusion of Rights.— Where the character of creditor and debtor unite in the same person, the credit and debt are *ipso facto* extinguished. Such merger in the person of the principal debtor inures to the benefit of his surety; but the merger of creditor and surety does not extinguish the obligation; and merger in the person of a joint and several creditor or debtor affects only his proportional part of the credit or debt. Pending partition of an inherited estate there is no merger when the debtor or the creditor inherits from the other. Where one of the rights is conditional, the merger does not occur, where the condition is suspensive, until it is realized; and where the condition is resolutory, the merger will cease upon the realization of the condition. These rules

apply in all cases where a contract is rescinded for any cause, and the original obligations, with all their incidents, even such as affect third persons, are restored. (Arts. 1599–1605.)

CHAPTER 13.

NOVATION.

Art. 374. Nature and Effects.

Art. 374. Nature and Effects.—Novation of a contract occurs when the parties substantially change its conditions, substitute a new debt for the old, or make any other essential alterations; likewise where a new debtor is substituted for the old one who is released, or an old creditor is replaced by another, to whom the debtor remains obligated. Novation is a contract and is subject to all the rules governing contracts, except as modified in this chapter; it must be expressed, and is never presumed.

Novation by substitution of a new debtor may be effected without the consent of the first, as in the case of payment, but not without the consent of the creditor; and where the creditor accepts the new debtor and releases the first, he cannot recover against the first if the new one becomes insolvent, unless so expressly agreed. The old debt being extinguished by the novation, all incidental rights and obligations are also extinguished, unless expressly reserved, and if such reservation affects a third person, his consent must be had.

Where novation occurs between a creditor and one joint and several debtor, the liens and mortgages of the old debt can only subsist with respect to the property of the debtor contracting the new debt; the other co-debtors being discharged by the novation, although their obligation to contribute, as provided in Art. 334, is unaffected.

If the original obligation is extinguished when the second

one is contracted, the novation is without effect. Although the original obligation is subject to a "suspensive" condition, the novation is only dependent upon its fulfillment when it is expressly so provided.

Where the original obligation is absolutely forbidden by law, or its defects cannot be cured, the obligation substituted is void; if the novation only is void, the original obligation remains in force.

The substituted debtor cannot set up defenses which were personal to the first debtor, but he may set up such as he personally has against the creditor, or which arise from the contract. (Arts. 1606-1620.)

CHAPTER 14

ASSIGNMENT OF CHOSSES IN ACTION.

Art. 375. What is Assignable.

376. Discharge of Obligation.

377. Requisites of Assignment.

378. Notice of Assignment.

379. Effects of Assignment — Warranties.

Art. 375. What is Assignable.— A creditor may assign his right to another, with or without consideration (*por título gratuito ú oneroso*), and independent of the debtor's consent; except that litigious claims cannot be assigned to persons connected with the courts or having any other official position, within the limits of their jurisdiction, and any such assignment is void. The claim is considered litigious, or in litigation, from the time of sequestration in executive suits, from the posting of the "*cédula*" in foreclosure suits, and from the filing of the answer to final judgment in all other suits. The debtor can only object to the assignment where the claim is litigious, and where he has an existing claim against the assignor, which is subject to set-off. (Arts. 1621-1623, 1627, 1630.)

Art. 376. The Discharge of Obligation.—The debtor of any litigious obligation, assigned for a valuable consideration, may discharge himself by paying to the assignee, before final judgment in the court of last resort, the amount he paid for it, with interest and any other expenses incurred in the assignment, except where the assignment is to the heir or co-owner of the right assigned, or in favor of the possessor of real property affected by the right assigned, or if made to a creditor in payment of his debt; in which cases the payment does not discharge the obligation. (Arts. 1624–1626.)

Art. 377. Requisites of Assignment.—In order for the assignment to be effective, the delivery to the assignee of the document evidencing the right is indispensable where such document is required by law or has been issued; and every assignment is void unless made by “private instrument” when the value of the right assigned does not exceed five hundred pesos, or by *escritura pública* when it exceeds that amount, or where the law requires the right assigned to be evidenced by *escritura pública*. (Arts. 1628–1629.)

Art. 378. Notice of Assignment.—Before the assignee can exercise his rights against the debtor, he must give him notice of the assignment, either judicially, or before two witnesses or a notary; and only the creditor who presents the document evidencing the claim, or the written assignment when the former is not necessary, has the right to give such notice. If the debtor is present when the assignment is made and offers no objection, or afterwards accepts it, this is taken as notice. Before notice is given, the debtor may discharge himself by paying the original creditor, but after notice he can only pay the assignee upon presentation of the evidence of debt; if this is lost, the creditor may prove its existence, and the admission of the debtor or the decree of court will serve as a new title-paper. Until legal notice is given the creditors of the assignor may exercise their rights in respect to the assigned debt. (Arts. 1631–1637.)

Art. 379. Effects of Assignment — Warranties.— The claim assigned passes to the assignee with all its rights and obligations of every kind, unless otherwise agreed; the assignee having in no event greater rights or obligations than his assignor. The assignor guarantees the existence and legality of the claim at the time of the assignment, unless it be assigned as doubtful, but does not guarantee the debtor's solvency, unless he expressly agrees to do so, or the insolvency is public and prior to the assignment. If he makes such guarantee of solvency, his liability expires in one year, if no other time is fixed, from the time the debt is enforceable, if due, and if not due, from the time it falls due; if the claim assigned be a perpetual rent, his liability expires in ten years from the date of the assignment.

Where a number of rights are assigned in lump for a lump sum, the assignor guarantees the legality of the whole in general, but is not bound to make good (*al saneamiento*) each item, except in case of eviction of the whole or greater part; likewise one who assigns his right to an inheritance, without specifying the things composing it, only guarantees his heirship. If the assignor has received any products or portion of the inheritance, he must make good (*abonarlos*) to the assignee, unless otherwise agreed; and the latter on his part, must reimburse the assignor for anything he has paid by reason of the debts or incumbrances of the estate or his own claims against it, unless otherwise provided. (Arts. 1638–1647.)

CHAPTER 15.

RELEASE OF DEBT. (REMISIÓN.)

Art. 380. Release — Effects.

Art. 380. Release — Effects.— Everyone may waive his rights and release wholly or in part what is due him, ex-

cept where the law forbids it; a total release and discharge, made in or out of suit, binds only the party making it, leaving others who refuse to join free to enforce their rights.

Possession by a debtor of the evidences of debt is presumptive evidence of payment or release until the contrary is proven. A release of the principal debtor releases his surety, but the release of the latter does not avail the former; if one of several joint and several sureties is released as to his part of the liability, the others are not affected.

The return of a pledge is presumptive of the release of the lien on it, but not of the release of the debt. (Arts. 1648-1655.)

TITLE II.

RESCISSION AND NULLITY OF CONTRACTS.

CHAPTER 1.

RESCISSION OF CONTRACTS.

Art. 381. Grounds of Rescission.

382. *Lesión*.

Art. 381. Grounds of Rescission.—Only valid contracts can be rescinded; they are subject to rescission where fraud against his creditors is committed by a debtor in transferring his property; voluntary transfers by an insolvent debtor may be rescinded as fraudulent by his creditors; also payments made by the insolvent on account of obligations not enforceable when payment is made; likewise in the other cases provided by law. The action for rescission prescribes in four years. (Arts. 1656, 1659-1663.)

Art. 382. *Lesión*.—“*Lesión*” only occurs where a pur-

chaser pays two-thirds more, or the seller receives two-thirds less, than the just price or value of the property sold. No contract is rescindable solely for *lesión*, except where, in contracts of *compra-venta*, the property is appraised by experts after the sale is executed, and in their opinion "*lesión*" exists as above defined; but where the valuation is made at the time of the sale, it is not subject to rescission for *lesión*.¹ (Arts. 1657-1658, 2889-2890.)

CHAPTER 2.

NULLITY OF CONTRACTS.

Art. 383. Actions — Prescription.

384. Illegality.

385. Ratification.

386. When Action Lies.

387. Effects of Nullity.

Art. 383. Actions — Prescription.—Where the nullity is based on the incapacity of the parties, the rules stated in Art. 213 govern, and the action must be brought within the time prescribed for real or personal actions according to the nature of the case. Suit to annul the unauthorized contracts of married women must be brought during the marriage and within four years after its termination; for mistake, in five years, unless the mistake is sooner discovered by the party committing it, in which event suit must be brought within sixty days after the error is discovered; for intimidation (duress), within six months after the cause is removed.

The defense of nullity of a contract is perpetual. Both the action and defense are available to the parties and their sureties, unless otherwise provided by law; but the nullity arising from the incapacity of one of the parties cannot be pleaded by the other unless he did not know of it at the

¹ See Art. 480.

time of making the contract; nor can the defense of mistake or duress be pleaded by the party who contributed to either. (Arts. 1664-1667, 1673-1676.)

Art. 384. Illegality.—Where the nullity is due to the illegality of the object of the contract, either morally objectionable or constituting a crime or default common to both parties, neither one can enforce it nor recover under it, but where only one party is at fault, the innocent one may recover whatever he has advanced, but cannot be required to perform on his part. (Arts. 1668-1672.)

Art. 385. Ratification.—A contract void for incapacity, duress or mistake may be ratified when the cause is removed, unless another cause invalidates the ratification. Voluntary performance by payment, novation, or otherwise, is a ratification and cannot be avoided; such ratification and performance of a contract void for want of form or solemnity extinguishes the action of nullity, except as otherwise provided by law. (Arts. 1677-1679.)

Art. 386. When Action Lies.—Where the thing which is the object of the contract has been lost before the term begins to run, the action will always lie when founded on incapacity; also for mistake, fraud, violence or duress where the claimant is not at fault for the loss; in all other cases of nullity the action will not lie where the thing was lost in the possession of the plaintiff, or in that of the defendant if he is not at fault. (Art. 1681.)

Art. 387. Effects of Nullity.—Upon the nullity of the contract being decreed, each party will recover whatever he has parted with, or its value with interest if it cannot be restored in kind, together with its products or their value; until one party makes restoration the other cannot be forced to do so. (Arts. 1680, 1682.)

CHAPTER 3.

CONTRACTS IN FRAUD OF CREDITORS.

Art. 388. Fraud — Rescission.

389. Insolvency.

390. Other Grounds — Preferences.

391. Actions — Effects.

Art. 388. Fraud — Rescission.— Acts and contracts simulated by the parties for the purpose of defrauding a third person may be rescinded or annulled at any time at the instance of the injured party; by “simulated” being meant the false recital of matters which did not take place; and the right or thing involved, with its products or interest, must be restored to the party entitled.

Acts and contracts actually in prejudice of creditors may be rescinded at the instance of the latter if such act or contract results in the insolvency of the debtor; provided, in case such act or contract is upon a consideration (“onerous”), it can only be rescinded if both the debtor and the third party acted in bad faith, but if it were without consideration (“gratuitous”), it may be rescinded although both acted in good faith. (Arts. 1683–1689.)

Art. 389. Insolvency.— Insolvency exists when the total property and credits of the debtor, estimated at their fair value, do not equal the amount of his debts; bad faith in such case consists in knowledge of the deficit; where the creditor seeking rescission proves that the debtor’s debts exceed his known assets, the burden is on the debtor to prove that he has property sufficient to cover his debts. (Arts. 1690, 1698.)

Art. 390. Other Grounds — Preferences.— Rescission lies whether the debtor transfers property actually in his possession or renounces rights, the enjoyment of which is not

exclusively personal. Payments made by the insolvent before maturity are rescindable; also all acts or contracts executed within thirty days prior to an adjudication of bankruptcy, the object of which is to give to any existing creditor a preference which he did not have; such fraud involves only the loss of the preference, not of the right. (Arts. 1692-1694, 1697.)

Art. 391. Actions — Effects.— Action for rescission lies only against the first taker, and not against his transferee, unless the latter took in bad faith. Where the debtor or his assignee satisfies the debt, or the debtor acquires sufficient property to protect it, after suit brought, it must be dismissed. Upon rescission being decreed the property involved becomes assets for the benefit of creditors. (Arts. 1691, 1695-1696, 1699.)

TITLE III.

SURETY CONTRACTS.

CHAPTER 1.

SURETYSHIP IN GENERAL.

- Art. 392. Definition and Kinds.
393. Incidents of Suretyship.
394. Same — Surety and Creditors.

Art. 392. Definition and Kinds.— Suretyship is the obligation contracted by one person to pay or perform for another if the latter fails to do so; it is either legal, judicial, conventional, gratuitous (accommodation) or onerous (for a consideration). It may be constituted in favor of the surety as well as of the principal debtor, with or without his knowl-

edge or consent, or against his will. All who can contract may become sureties, though women are only allowed as such where they are engaged in commerce, or have deceitfully (*con dolo*) procured their acceptance as surety to the prejudice of the creditor, or have received from the debtor the property or amount in regard to which the bond was given, or where they become bound in respect to their own property, or in behalf of their ascendants, descendants or husbands. (Arts. 1700–1704.)

Art. 393. Incidents of Suretyship.—Suretyship for a void obligation is void. If for future or unliquidated debts, the surety cannot be held liable until the principal obligation is legally enforceable. It may be for less but cannot exceed the principal obligation either in substance or conditions; if executed for more it is valid only to the extent of the principal, except where the surety undertakes by mortgage or pledge to secure an obligation not before secured in that way. The surety may also bind himself to pay a sum of money if the principal fails to deliver a thing or perform an act as stipulated.

Suretyship is not presumed, but must be expressly created and is limited to the terms expressed, and cannot be extended to any other obligations; where unlimited the surety's obligation is exactly that of the principal debtor; he is liable to both the creditor and debtor for expenses, "*daños y perjuicios*" caused by his fault or delay. All the rights and liabilities of the surety pass to his heirs, whose responsibility is governed by the rules of "passive mancommunity." (Arts. 1705–1715.)

Art. 394. Same — Surety and Creditor.—The surety is only subject to suit in the place of performance of the original obligation, unless otherwise agreed. The debtor must establish the sufficiency of the proffered surety to the satisfaction of the creditor, who cannot be required to accept him

unless he has legal capacity to contract, and has free and unencumbered real estate situated in the place of performance, sufficient to secure the obligation, except that when the debt is less than three hundred pesos, real estate security is not required. If the surety becomes insufficient to the point of being in danger of insolvency, the creditor may require another surety; likewise the creditor in contracts on time or for periodical payments, may demand surety where the debtor suffers loss of property or is about to leave the place, although no surety was required in the original contract. If the debtor fails to furnish or renew the surety within the time fixed by the judge upon the petition of the interested party, he is liable to the immediate payment of the debt although it is not yet become due; and where bond is required to guaranty administration, the latter shall end unless the bond is furnished in the time fixed, unless otherwise provided by law. Where the bond is to cover an amount which the debtor is to receive, the money shall be deposited until the bond is given. (Arts. 1716-1723.)

CHAPTER 2.

EFFECTS OF SURETYSHIP BETWEEN CREDITOR AND SURETY.

Art. 395. Rights of "*Orden, Excusión and División*."

396. Proceedings to Enforce.

397. Sundry Provisions.

Art. 395. Rights of "*Orden, Excusión and División*."—"*Orden*" is the right of the surety to require the creditor to proceed first against the principal debtor, and by "*excusión*" to exhaust all the property of the debtor before having recourse to that of the surety; "*división*" is the right of the surety, upon being sued for the whole debt, to require the creditor to join in the suit all solvent co-sureties and recover against them pro rata (*Escríche Mexicano, sub. Voc*). These "benefits" exist in all cases except: Where

expressly waived by the surety; or he is jointly liable with the debtor; or in case of the bankruptcy or proven insolvency of the debtor; or where the bond was given for the personal benefit of the surety; or where the debtor cannot be sued in the Republic; or his whereabouts being unknown and having been cited by publication, he does not appear, and has no property subject to attachment within the jurisdiction; but such waiver or joint liability must be expressly stipulated in the bond.

The surety may interpose all defenses inherent in the principal obligation and not personal to the debtor; and he cannot be compelled to pay until after judgment and "*excusión*" against the debtor, which consists in applying the entire free value of his property to the payment of the debt. The surety cannot enjoy these "benefits" unless, immediately upon being sued, he claims the rights, and he must designate property of the debtor, free and unencumbered within the jurisdiction, sufficient to pay the debt; and must also advance or secure the costs of the "*excusión*." (Arts. 1724-1729, 1743.)

Art. 396. Proceedings to Enforce.—The creditor may oblige the surety to have "*excusión*" against the debtor; and if the latter acquires property or any is discovered after suit begun against the surety, the latter may then have "*excusión*" against the debtor; such process must be prosecuted within the time fixed by the judge in view of all the circumstances. If the creditor is negligent in prosecuting the process, he is liable to the surety for all "*daños y perjuicios*" caused him, and the latter is discharged to the extent of the property he has designated for the "*excusión*." The surety for the performance of an act may discharge himself as provided in Art. 338 by procuring its performance by another person.

Where the surety has waived the right of "*órden*" but not of "*excusión*," both surety and debtor may be jointly

sued, but the former retains his right of "*excusión*" even after judgment against both; but where he has waived both rights, he may, upon being sued, give notice of the suit to the principal debtor, who must appear and defend, and if he fails to do so he is bound by the judgment rendered against the surety. Where the surety pays after judgment, he may proceed by executive action against the debtor; if he pays without judgment, he has his action according to the nature of the obligation. A compromise between the debtor and creditor operates to the benefit of the surety but not to his prejudice; that between the surety and the creditor benefits but does not prejudice the principal debtor. (Arts. 1730-1738.)

Art. 397. Sundry Provisions.—The surety of a surety enjoys the benefit of "*excusión*" against both the surety and the principal; but those who merely vouch for the sufficiency of a surety are not sureties for him.

Each of several sureties for one debt is severally liable for the whole amount unless otherwise provided; but where only one is sued he may require the others to be joined and defend, or they are likewise bound, and in due proportion, by the results of the suit. A joint and several surety who pays the debt may require contribution from the others; but if not several, he may only recover what he has paid, from the debtor.

A surety asking the benefit of "*división*" is only liable for the share of an insolvent surety where the insolvency is prior to the request, and not even for that if the creditor voluntarily proceeds to collect pro rata without being requested. (Arts. 1739-1742, 1744.)

CHAPTER 3.

EFFECTS OF SURETYSHIP BETWEEN DEBTOR AND SURETY.

Art. 398. Indemnity — Subrogation.

Art. 398. Indemnity — Subrogation.— A surety who pays must be indemnified by the debtor, although the latter did not consent to the making of the bond, but if it was executed against the will of the debtor, the surety cannot recover. The surety who pays for the debtor must be indemnified by him for: 1, The principal debt; 2, all interest accrued since the debtor was notified of the payment, although the original debt did not carry interest; 3, for costs incurred since the debtor was notified by the surety that he has been sued for payment; 4, for all damages suffered by the surety on account of the debtor. The surety who pays is subrogated to all the rights which the creditor had against the debtor; but if the surety compromised with the creditor, he can only recover what he actually paid; and he may recover the whole amount against either of two or more debtors severally liable; if he paid without notifying the debtor, the latter may interpose all the defenses he may have had against the creditor at the time of payment; and if the debtor, without knowing of the payment by the surety, himself pays the creditor anew, the surety may recover the payment from the creditor, but not from the debtor.

If the surety paid by virtue of a judgment, and could not for just reason notify the debtor of the payment, the latter must indemnify the former, and can only set up such defenses as are inherent in the obligation, and which, being known to the surety, were not pleaded by him in the suit. If the debt was payable on time or conditions, and the surety pays before it is due, he cannot recover from the debtor until after the debt is legally due. The surety may, even before payment, require the debtor to give security for the payment.

or relieve him from the bond: 1, If he has been sued for payment; 2, if the debtor has suffered losses so as to be in danger of insolvency; 3, if the debtor is about to leave the country; 4, if he agreed to relieve the surety from his obligation within a certain time, which has elapsed; 5, if the debt becomes recoverable by the expiration of the period; 6, at the expiration of ten years, if the principal debt has no fixed period for becoming due, and the bond was gratuitous. In cases under clause 5, the surety may also require the creditor to proceed against the principal debtor or against himself as surety, the latter being entitled to the benefit of "*excusión*" if there is occasion for it; if within sixty days after making such requirement the creditor does not sue the debtor or surety, the latter is discharged from his obligation. (Arts 1745-1756.)

CHAPTER 4.

EFFECTS OF SURETYSHIP AS BETWEEN THE SURETIES.

Art. 399. Contribution between Sureties.

Art. 399. Contribution Between Sureties.—If one of two or more sureties for the same debt and debtor has paid the whole obligation, he may require each of the others to repay his proportional part; if any of them is insolvent his share will be divided *pro rata* among the others. But the right to require contribution only exists where the payment was judicially enforced or where the principal debtor has failed. The co-sureties sued by the one who paid may interpose all the defenses which the principal debtor might plead against the creditor, which are not purely personal to the debtor or to the paying surety. The surety of a surety who has become insolvent, is liable to the other sureties the same as the insolvent surety would have been. (Arts. 1757-1761.)

CHAPTER 5.

EXTINCTION OF THE BOND.

Art. 400. Discharge of Surety.

Art. 400. Discharge of Surety.— Surety bonds are subject to extinguishment the same as other obligations, and are extinguished by the extinction of the principal obligation. If the obligation of the principal debtor and of the surety become merged by inheritance, the liability of a surety for such surety is not extinguished. The liability of a surety is discharged by the voluntary acceptance by the creditor of any property in payment of the debt, although he afterwards loses it by eviction; if the creditor releases one surety without the consent of the others, all are proportionally discharged from the remitted obligation. Sureties, although severally liable, are discharged from their obligation if through the fault or negligence of the creditor they cannot be subrogated to all his rights and liens against the debtor. An extension or delay conceded by the creditor to the debtor without the surety's consent, discharges the bond. A release (*quita*) reduces the bond to the same extent as it does the principal debt, and extinguishes it if by virtue thereof the principal obligation is subject to new burdens or conditions. (Arts. 1762–1768.)

CHAPTER 6.

LEGAL OR JUDICIAL BONDS.

Art. 401. Sufficiency — Incidents.

Art. 401. Sufficiency — Incidents.— A surety required by law or by judicial order to be given, must possess the qualifications prescribed in Art. 394; if such surety cannot be

found, the party required to give security may give instead a pledge or mortgage sufficient to cover his obligation. The judicial surety cannot have *excusión* against the principal debtor, nor a surety for such surety against either the latter or the principal debtor. (Arts. 1769–1772.)

TITLE IV.

PLEDGES AND ANTICRESIS.

(*Código Civil*, Arts. 1773–1822.)

CHAPTER 1.

PLEDGES.¹

Art. 402. Definition — How Created.

403. Rights and Obligations of Parties.

404. Same — Disposition of Pledge.

Art. 402. Definition — How Created.— A pledge (*prenda*) is a real right constituted upon any kind of personal property, to secure the compliance of an obligation and its preferential payment; it cannot be lawfully constituted except to secure a valid debt; it may be constituted without the consent of the debtor. The contract of pledge is only effective by the delivery of the thing pledged and its remaining in the possession of the creditor, unless it is lost with his fault, or where it consists of products growing upon real estate, which must be gathered at a certain time; when it consists of such products, whether yet growing or already gathered, the owner of the estate is considered as bailee of the same unless otherwise agreed. If the thing pledged is a title or evidence of indebtedness which must be registered according to law, it is not effective against third persons until it is registered.

A pledge may be given to secure future obligations, but in

¹ See, for Mercantile Pledges, *post*, Art. 609.

such case the thing pledged cannot be sold or adjudicated without proof that the principal obligation is legally demandable. No one can pledge the property of another without special power from the owner, unless it is shown that the owner loaned the thing for the purpose of its being pledged. A pledge must always be created in writing and by *escritura pública* whenever the amount of the obligation secured exceeds five hundred pesos; unless in writing it is ineffective as against third persons. (Arts. 1773-1779, 1782, 1785-1788.)

Art. 403. Rights and Obligations of Parties.—The creditor holding an evidence of debt in pledge has no right to collect it or receive payment upon maturity, although payment is offered him, but he may require the payor to deliver and deposit the amount due; the pledgee must do everything necessary to protect the rights represented by the instrument from being impaired. Where a debtor has agreed to give a certain thing in pledge and with or without his fault fails to deliver it, the creditor may require the thing to be delivered, unless it has legally passed into possession of a third person, or he may have the obligation declared to be due and demandable at once, or that it be rescinded.

The creditor acquires through the pledge: 1, The right to have his debt paid out of the value of the thing pledged, for which he has a lien as provided in Art. 726; 2, to bring all possessory actions and to prosecute any theft of the thing pledged, even by its owner; 3, to be indemnified for all necessary and useful expenses incurred in the preservation of the thing, unless by agreement he makes use of it; 4, to require the owner to give another pledge or to pay the debt even before it is due, if the thing pledged is lost or injured without the creditor's fault. If he is disturbed in his possession, he must notify the owner to defend it, and if the latter does not he is liable for all damages incurred. If upon the loss of the pledge the debtor offers another or a

bond, it is optional with the creditor to accept it or to rescind the contract.

The creditor is bound: 1, To take care of the thing pledged as if his own, and to make good its loss or damage through his fault or negligence; 2, to return the pledge as soon as his debt, together with interest and expenses, if any, is paid. If the creditor abuses the thing pledged, the debtor may require him to deposit it or give bond to return it in its original condition; abuse by the creditor consists in using the thing without agreement that he may, or if agreed, by injuring it or using it for a different purpose than that for which it was intended. If the debtor transfers the thing pledged, or its use and possession, the transferee cannot require its delivery without paying the debt, with interest and costs if any. (Arts. 1780-1781, 1783-1784, 1789-1795.)

Art. 404. Same — Disposition of Pledge.—The “fruits” of the thing pledged belong to the debtor; but if by agreement the creditor receives them, their amount will be applied first to the expenses, then to the interest, and the balance to the principal; but the parties may agree to the reciprocal set-off of the “fruits” against the interest, and if there is no agreement, they will be set off so far as amounts are equal, and any excess applied to the principal. The pledge only secures the obligation for which it was given, unless otherwise agreed.

If the debtor does not pay at the time agreed, or on demand if no time is fixed, the creditor may ask and the judge will decree the sale of the thing pledged at public auction after notice to the debtor, and if it cannot be sold as prescribed by the Code of Civil Procedure, it will be adjudicated to the creditor at two-thirds of its value as appraised by experts; the creditor cannot retain the thing in payment of the debt unless so agreed, in which case it will be appraised

and adjudicated as above, or by agreement the thing may be sold at private sale; in any event the debtor may have the sale suspended by paying the debt within twenty-four hours after the suspension. If the proceeds of the sale exceed the debt, the excess will be paid over to the debtor; if less, the creditor may sue the debtor for the balance.

The creditor is not liable for the "eviction" of the sold pledge unless there was fraud on his part or he expressly assumed that obligation. The right and obligation arising from pledge are indivisible unless otherwise stipulated; the right is extinguished with the extinction of the principal debt by payment or otherwise. Public or private pawnshops which are legally authorized to lend money on pledges, are subject to the special regulations concerning them so far as the same are not contrary to this chapter. (Arts. 1796-1809.)

CHAPTER 2.

ANTICRESIS.

Art. 405. Definition — How Constituted.

406. Rights and Duties of the Creditor.

Art. 405. Definition — How Constituted.— The debtor may give as security for his debt any real estate which he owns, the creditor having the right to make use of it on account of the interest due, if any, or if none, of the principal: This is called anticresis; the contract is void unless by *escritura pública*. The *escritura* will state whether interest is to be paid, and will fix the terms on which the creditor is to administer the estate; otherwise no interest will be payable, and the creditor must administer the property as a general mandatary, according to Art. 421. Contracts made by the creditor as administrator are valid, but cannot extend beyond

the term of the anticresis, unless otherwise agreed between the debtor and creditor. (Arts. 1810–1813.)

Art. 406. Rights and Duties of the Creditor.—The anticresis creditor has the right: 1, To retain the real estate until his debt is fully paid, unless another has a prior mortgage on the property; 2, to transfer to another on his own responsibility the usufruct and administration of the property unless otherwise stipulated; 3, to defend his rights through possessory actions. The creditor must render account of the products of the property, and has the same obligations as a pledge creditor, and must account: 1, For the “fruits” and returns lost through his fault; 2, for the taxes and other real estate charges, which he may deduct from the income; he must also make the expenses necessary for the preservation of the property, deducting them from the income; where the amount of “fruits” cannot be exactly determined, it will be determined by experts as in cases of lease. Unless otherwise provided the accounts must be rendered yearly; if the creditor retains the property for ten years without rendering accounts, the principal and interest will be presumed to be paid unless proven to the contrary; if accounts are not rendered within three months after they should be given, the debtor may have an interventor appointed at the creditor’s cost. The creditor can not retain the property upon failure to pay, but the property will be sold or adjudicated as provided in Art. 404. Without express or tacit consent of the owner, the property of another can not be given in anticresis. (Arts. 1814–1822.)

TITLE V.

MORTGAGES. (*Hipotecas.*)

(Código Civil, Arts. 1823–1927.)

CHAPTER 1.

GENERAL RULES.

- Art. 407. Defined — Property Subject to.
408. Entirety and Division.
409. Impairment of Security — Change of Form.
410. Legal Incidents of Mortgages.

Art. 407. Defined — Property Subject to.— A mortgage is a real right imposed on real property or real rights, which must be certain and definite, to secure the performance of an obligation and its preferential payment, the mortgaged property remaining subject to the encumbrance although passing into third hands. If the property is already encumbered, the mortgage extends only to its value after deducting the amount of the real encumbrance, or the equivalent of five years' income if the encumbrance is in the form of annuities.

The mortgage of an estate only covers: The area or surface of the land; the buildings then standing or afterwards erected by the owner; permanent accessions and improvements to land or buildings, and such fixtures, machinery and farm animals, added by the owner to the mortgaged estate, as are classed as "*inmuebles*" in clauses III and VII of Art. 224, and which may be freely disposed of before the mortgage is executed; the stock reserved for breeding purposes, as provided in clause VIII of said Article 224. The mortgage of a building on the land of another does not cover the ground. The bare ownership may be mortgaged, but if the usufruct afterwards becomes merged with the ownership in the person

of the owner, the mortgage will extend to the whole estate. Property already covered by mortgage, with express provision against re-mortgaging, may be again mortgaged, but subject to the rights of preference established in the Code. Property of persons not having the free disposition of it can only be mortgaged with the formalities required by the Code. A mortgage imposed on real rights exists only so long as the rights continue, but if the latter should be extinguished by the fault of the beneficiary he must constitute another mortgage to the satisfaction of the creditor or pay damages.

The following can not be mortgaged separately from the real estate: Pending "fruits" and rents; fixtures; easements, except water rights, which are mortgagable; nor at all: The rights of usufruct granted by the Code to ascendants in the estate of their descendants; use and occupancy; property sold with agreement for resale, until the right has expired; mines, although on one's own land, until the title or grant has definitely issued; all property in litigation. (Arts. 1823-1834.)

Art. 408. Entirety and Division.—Several estates mortgaged together to secure one indebtedness may be subjected to its satisfaction, together or singly, until paid in full, unless the mortgage provides that each is to be bound for only a specified part of the debt; and the mortgage subsists in its entirety, until cancelled, upon all the property mortgaged, although the debt is reduced or part of the property destroyed, except as herein provided; and although the estate be divided into several, the mortgage indebtedness is not distributed among them unless mutually so agreed between the debtor and creditor, and all the parcels may be subjected to the debt. Where the mortgage covers several estates each liable for only a part of the debt, upon the payment of the encumbrance on any part the interested party may require the cancellation of the mortgage as to such part; if the part of the debt paid may be applied to release more than one of

the mortgaged properties, the debtor may select the ones to be released, but such right only exists where expressly stipulated. Where an *enfiteutista* mortgages an estate without the consent of the owner, the provisions of Art. 465 apply. (Arts. 1835–1842.)

Art. 409. Impairment of Security — Change of Form.—

When the mortgaged property becomes through the fault of the debtor insufficient to secure the debt, the creditor may either require immediate payment or that the mortgage be increased, but where it occurs without the debtor's fault, the payment of the debt cannot be demanded if he increases the mortgage to the creditor's satisfaction. If the property is insured and is destroyed by fire or otherwise, the mortgage rests on the ruins, and the insurance money is liable for the payment; if the mortgage debt is due, the creditor may demand the retention of the insurance money; and if the debt is not yet due, he may require that it be held to pay the debt when it becomes due. The same rules apply to the price in cases where the mortgaged property is taken for public uses or sold at judicial sale (Arts. 1843–1845.)

Art. 410. Legal Incidents of Mortgages.—Only one capable of selling can mortgage, and only property which can be sold may be mortgaged, except in case of a necessary mortgage demanded by a married woman upon her dowry lands, as provided in Art. 413. A mortgage made by one having no right to make it is not cured by his subsequent acquisition of the right. The owner cannot, without the consent of the mortgagee, contract for the payment of the rents in advance for a time to exceed the period of the mortgage debt, nor for more than four years if the debt has no fixed time, any such contract being void as to the excess. If the debt bears interest, the mortgaged estate is not liable for more than five years' interest, unless the mortgage is extended

to cover it, and is duly registered, and only affects third persons from the date of registry.

A mortgage may be made by the debtor or by another in his favor; but it is subject to all conditions and limitations of the title, which must be recited in the mortgage; failure to state them raises the presumption of fraud. All the owners of an estate held in common must join in a mortgage.

Right to foreclose prescribes in twenty years from the time it accrues under the terms of the mortgage, the lien retaining the precedence secured by its registry. The mortgagee cannot acquire the mortgaged property except by consent of the debtor, or by adjudication where there is no other bidder, as provided in the Code of Procedure.

A mortgage can only be made by *escritura pública*, the notary noting the hour of the day when it was executed, under penalty of loss of his office. A mortgage is never implied, nor general; it must always be registered; it is either voluntary or necessary, as defined below. (Arts. 1846-1857.)

CHAPTER 2.

VOLUNTARY MORTGAGES.

Art. 411. Definition — Incidents.

Art. 411. Definition — Incidents.— Voluntary mortgages are those agreed on between the parties or placed by the owner on his property; they may be unconditional or conditional, and may be executed by the owner in person or by attorney-in-fact with special power for the purpose. Where made to secure a future obligation, or subject to suspensive conditions duly registered, it is effective as to third persons from its registry, if the obligation is incurred or the condition is fulfilled; such fact must be noted on the margin of the mortgage register

before the mortgage can avail or affect a third person. Where the obligation secured is subject to a recorded "resolutive" condition, the mortgage will not cease to be effective as to third persons until the fulfillment of the condition is noted on the register.

The mortgage may be transferred or assigned in whole or in part, the assignment being made by *escritura pública* and registered, and notice of the same given to the mortgagor. The mortgage subsists as long as the contract provides or as long as the debt secured by it, and if no time is fixed for its maturity, it will be limited to ten years. The maturity of the debt may be extended once before the agreed or legal time expires, and the mortgage extended likewise; if no time for the extension is stipulated, it shall be for ten years; during such extension and the time for prescription the mortgage preserves its original preference; but upon a second or later extension, whether for a fixed time or not, it will only have such precedence as its last registration may give it. (Arts. 1858-1868.)

CHAPTER 3.

NECESSARY MORTGAGES.

Art. 412. Definition — When Required.

413. Who may Require.

414. Same — Incidents.

Art. 412. Definition — When Required.— The special mortgages which certain persons are required by law to give to secure property administered by them, or which certain persons may require to be given to secure debts due them or the administration of their property, are called necessary mortgages. They may be required at any time, although the occasion demanding it, such as marriage, guardianship, *patria potestad* or administration, has ceased to exist, so long as the

obligation which should be secured by it is unfulfilled. If several tracts of land are available for the mortgage, it may be imposed on any or all of them, under the terms of Art. 408; and the judge shall decide any question arising between the parties as to the sufficiency of the property offered. The mortgage exists so long as the debt secured by it. (Arts. 1869-1874.)

Art. 413. Who May Require.—The following are entitled to demand a necessary mortgage for the security of their interests: 1, A co-heir or co-distributee, upon the real estate distributed, to the extent of his legal warranty (*saneó*) or the excess of property he may have received; 2, a vendor or exchanger of real estate, upon such real estate, for the price or difference of values; 3, a donor, upon the real estate given, for the pecuniary charges imposed on the donee; 4, one who lends money for the purchase of an estate, upon said estate, where the fact that the loan was made for such purpose appears by *escritura pública*; 5, descendants whose parents or ascendants are mere administrators of their property, upon the property of the latter, to secure the preservation and restoration of the former's estate; 6, minors and others under disability, upon the property of their guardians, to secure their administration: in the cases within clauses 5 and 6 the giving of the mortgage is governed by the special provisions applicable to such persons; 7, a married woman, upon the property of her husband, for her dowry and paraphernal property, where its delivery appears by *escritura pública*; in the cases within clauses 5, 6 and 7, the giving of the mortgage may be required by the legal heirs or curator of the minor or person under disability; and by the woman if of age, by the giver of the dowry, by her parents, or by her guardian; and if the parties mentioned in the three clauses fail to demand it, the *Ministerio Público* may demand it; the right granted in clause 7 is imprescriptible, and may be exercised whenever the dowry is conferred, and if the dowry or

paraphernal property is real estate, she may require the mortgage to be preferably placed on it; 8, creditors having final judgments, upon the unencumbered property of the debtor, to be designated by the creditor; 9, legatees, upon the real property of the estate, for their legacies, if the testator failed to require it; 10, insurers, upon the property insured, for two years' premiums or the last two years' dividends on mutual insurance; the insurers of real property may require a special mortgage on the property insured, where the owner has failed to pay the premium for two years or more or for two or more of the latest dividends, in case of mutual insurance; such mortgage may be for the entire amount due, and is effective only from its registry; 11, the State, municipalities and public institutions, upon the property of their administrators or collectors, to secure the revenues of their respective offices. (Arts. 1875-1879, 1884-1886.)

Art. 414. Same — Incidents.— If the husband fails to give the dotal mortgage and begins to waste her property, the wife may demand that it be delivered to her, or deposited in a safe place, or be placed under administration; and where the property charged with her dowry is with her written consent conveyed or encumbered, she or her legal representative may require the mortgage to be transferred to other property of her husband. If the dowry property to be conveyed consists of perpetual rents or annuities, the mortgage must be for an amount which at legal interest will produce a like income; if the annuities are temporary and might or should continue after a dissolution of the marriage, the mortgage shall be for an amount to be agreed between husband and wife or fixed by the judge if they cannot agree.

The parties entitled to require a necessary mortgage may object to its sufficiency, and require it to be increased if the property mortgaged becomes insufficient to secure the obligation, the judge in either case to decide the question. If the parties required in clauses 5, 6, 7, 8 and 9 of the preceding

Article to give a mortgage have no real estate, the creditor is only entitled to the lien of creditors of the third class, except as provided in respect of guardians and administration of dowry. (Arts. 1880–1883, 1887–1888.)

CHAPTER 4.

REGISTRY OF MORTGAGES.

Art. 415. When and Where Registered.

416. Contents of Registry.

417. Incidents of Registry.

418. Registry of Marriage Settlements.

Art. 415. When and Where Registered.— A mortgage produces no legal effects except from the day and hour when it is duly registered. It must be registered in the books of the Public Registry of the place where the lands are located, and the mortgagee must present the original document, otherwise the registry is void; nor can a mortgage be registered which lacks any of the requisites prescribed in the following Article, and its registry is void; any other omissions may be supplied at the mortgagee's cost.

Mortgages executed by guardians and curators, and by husbands in respect of their wives' properties, must be registered within six days from their execution, not counting holidays and the time required by the going and return of the mails; the judges concerned with appointments of guardians, and the curators of minors and persons under disability, and the notaries before whom the documents concerning property of married women are executed, and the guardians themselves, are bound to see that the respective mortgages are registered, and are liable for damages for their failure to do so. Where the registry is not made, through the fault of the judge or notary, or otherwise, within the legal limit, it may be done afterward and is effective from its regis-

try, but those responsible for the omission must pay the costs and damages. (Arts. 1889-1893, 1896-1898, 1906-1908.)

Art. 416. Contents of Registry.— A mortgage cannot be registered which does not contain the certificate of the keeper of the registry showing any prior encumbrances for twenty years previously, which certificate cannot be waived and must be inserted by the notary, under penalty of all damages incurred. The register shall contain: 1, The name, residence, occupation and age of mortgagor and mortgagee; moral persons must be designated by their official name, and companies by their firm name; 2, the date and nature of the credit, the authority or notary who subscribed it, and the hour when it is presented for registry; 3, the nature of the right affected by the instrument and the source from which it is derived; 4, the amount of the debt secured; if its amount is not fixed, the parties will estimate it in the mortgage; 5, if it bears interest, the rate and time when it begins will be stated; 6, the maturity of the debt; 7, the nature of the real right or property mortgaged, with its location, name, number, boundaries and other circumstances; 8, the payment of the taxes to which the mortgaged property is subject. (Arts. 1894-1895, 1899.)

Art. 417. Incidents of Registry.— All entries in the register will be made one after the other without amendments or interlineations and without blank spaces, and must be signed by the registrar; if it is necessary to make some amendment or interlineation, it shall be noted at the end and signed by the registrar. The registry remains effective until the mortgage is cancelled or is prescribed. The registry of foreign mortgages is ineffective unless they are properly legalized. The fraudulent registry or cancellation of a mortgage is void, and the person responsible for it is liable in damages and to the penalties of forgery.

Any person is entitled to examine the registers and to

demand certificates of encumbrances. The registry officials are liable to penalties and for all damages caused by refusal or delay to receive instruments presented for registration and for failure to register them in legal form, such fact to be immediately attested by depositions of two witnesses, to be used as proof in the suit; and for failure to promptly issue the certificates requested, or for errors in making them, unless due to erroneous information for which they are not at fault. (Arts. 1909–1916.)

Art. 418. Registry of Marriage Settlements.—Real property or rights conveyed as appraised dowry will be entered in the husband's name in the register of property, the entry reciting the amount of the dowry, the estimated value of the property, and the dowry mortgage upon it, which mortgage must be registered *ex officio* by the registrar in the registry of mortgages; where the real property constituting the unappraised dowry, or the paraphernalia delivered to her husband, are registered in the name of the woman, a note stating the character of such property will be entered on the margin of the register; but if not registered in her name, they will be registered in the ordinary form, the entry showing the nature of the property as dowry or paraphernalia. If the former document is insufficient, the registry of both will be suspended, a cautionary notation being made. (Arts. 1900–1905.)

CHAPTER 5.

CANCELLATION OF MORTGAGES.

Art. 419. When and How Cancelled.

420. Extinction of Mortgages.

Art. 419. When and How Cancelled.—The registry of a mortgage may be cancelled by consent of the creditor or by final judicial decree; the cancellation is made by an entry

by the registrar on the margin of the register by virtue of such consent or decree. Guardians and other administrators of estates can only consent to such cancellation on behalf of the estates in case of actual payment or by judicial decree. The cancellation may be decreed, where the creditor wrongfully refuses to give his consent, or when the registry is void, and in other cases provided by law.

The action to cancel or rectify the registry must be brought in the court of first instance in the jurisdiction where the registry office is; if the registry was made in different offices, the action will be brought in the jurisdiction where the greater part of the mortgaged property, estimated by the amount of direct taxes paid, is located. The details of the mortgage-registry system will be determined by special regulations. (Arts. 1917-1924.)

Art. 420. Extinction of Mortgages.—Mortgages are extinguished: 1, By the rescission, nullity or extinction of the obligations secured; 2, by the destruction of the mortgaged estate, except as provided in Art. 409 in regard to the insurance; 3, by express release by the creditor; 4, by the prescription of the action of foreclosure; 5, by the extinction of the debtor's rights in the mortgaged estate; 6, by the taking of the property for public uses, except as to the price received, as in Art. 409; 7, by the judicial sale of the estate, as provided in Art. 485. The mortgage will be revived if the payment is without effect by reason of the loss of the thing by the debtor's fault while in his possession, or the eviction of the creditor; in such event, if the registry has been already cancelled, the revivor only takes effect from the time of the new registry, but the debtor is liable for damages resulting. (Arts. 1925-1927.)

TITLE VI.

POWERS OF ATTORNEY. (*Mandatos.*)

(*Código Civil*, Arts. 2342–2433.)

CHAPTER 1.

GENERAL RULES.

Art. 421. Definition — Kinds.

422. Form — Incidents.

423. Duties of Mandatary to Principal.

424. Duties of Principal to Mandatary.

425. Duties and Rights towards Third Persons.

Art. 421. Definition — Kinds.— A power of attorney (*mandato* or *procuración*) is a contract by which one person empowers another to do something in his name; it must be accepted by the mandatary; mandates may be conferred upon absent persons, in which event performance of the act authorized is a tacit acceptance. All lawful acts not required by law to be performed personally may be performed by attorney under mandate, which may be either written or verbal. A written mandate, or power of attorney, may be executed by *escritura pública* with all legal formalities, or may be by private instrument, which is any document written and signed only by the principal (*mandante*), or written by another and signed by the principal and two other witnesses; the verbal mandate by spoken words between the parties requires no witnesses. A mandate may be general, embracing all the business affairs of the principal, in which event it only authorizes acts of administration; or special, limited to certain specified matters only; the mandate must be special to authorize conveyances, mortgages and all other acts of strict ownership. (Arts. 2342–2351.)

Art. 422. Form — Incidents.— A power of attorney must be by notarial act (*escritura pública*): 1, When it is general; 2, when the amount involved exceeds one thousand pesos; 3, when the act to be performed is required by law to be by *escritura pública*; 4, when conferred for judicial business, except as provided in Art. 426. It may be by private document when the amount involved exceeds two hundred and is less than one thousand pesos. Disregard of these requirements renders the mandate void as to obligations contracted between the principal and a third party, but makes the agent personally liable as between himself and a third party acting in good faith. The principal may demand in such case the return of any amounts delivered to the agent, which he holds as a simple bailee; if all three parties act in bad faith no action lies between them.

Married women and minors over eighteen may be mandataries, but must be duly authorized by the husband, father or guardian respectively; otherwise the mandate is void with the effects above stated, but the rules governing the liability of married women and minors must be observed in any actions brought. (Arts. 2352–2358.)

Art. 423. Duties of Mandatary to Principal.— The mandatary must perform the mandate in the terms and during the time agreed, with such care and diligence as the business requires and as he gives to his own, being otherwise liable for losses and damages caused by his neglect, and he cannot set off against such damages any advantages he may have gained for the principal; he is also liable for exceeding his powers, to the principal and to the party with whom he contracted, if the latter was ignorant of the fact. He must render correct accounts to the principal when agreed or requested, and at the end of the business; must turn over everything received by virtue of the power, although it was not due to the principal, and must pay interest from the date of default on all

amounts he may have improperly converted or delayed in paying over.

Where a mandate is conferred on several persons for the same business or act, they are not severally liable unless expressly so agreed, each one being liable only for his own act; but if none of them performed the mandate, any resulting liability shall be borne by them equally. The mandatary may delegate his powers to another if expressly authorized; if a certain person is designated as substitute he can name no other, otherwise he may name whomever he may select, being only liable when such person is chosen in bad faith or is notoriously insolvent; the substitute has the same rights and duties in respect to the principal as the mandatary. (Arts. 2359–2371.)

Art. 424. Duties of Principal to Mandatary.—The principal must reimburse the mandatary for all expenses necessarily incurred, with interest from the time paid out, and indemnify him for all losses suffered upon terminating the mandate; must pay him the compensation or fees agreed, although the results are not advantageous to the principal, unless by the former's fault or negligence, the mandate not being gratuitous unless expressly so agreed. If several persons appoint a single mandatary for a common business, they are severally liable for the results of the mandate, all the others making contribution to one who has paid. (Arts. 2372–2377.)

Art. 425. Duties and Rights towards Third Persons.—The principal must perform the obligations contracted by his mandatary within the limits of his powers; the latter's acts being void as against the principal if they exceed his powers, unless tacitly or expressly ratified; a third person contracting with the mandatary exceeding his powers has no action against him where he knew the extent of his powers, unless the latter personally bound himself; nor has the mandatary any action

to enforce contracts made in the principal's name unless expressly authorized. (Arts. 2378-2381.)

CHAPTER 2.

JUDICIAL POWERS OF ATTORNEY. (MANDATO JUDICIAL.)

Art. 426. General Requisites.

427. Special Clauses — Duties of Attorney.

428. Termination of Power.

Art. 426. General Requisites.— Minors, women (except for their husbands, ascendants or descendants), those not in the full exercise of their civil rights; judges, magistrates, and other officials and employes engaged in the administration of justice, within their jurisdiction; and the employes of the public revenue in any case in which they may have to act officially, within their districts, cannot act as attorneys (*procuradores*) in judicial matters.

The judicial mandate must be by *escritura pública*, except when the amount involved does not exceed one thousand pesos it may be by private document signed by two witnesses, or ratified by the principal before the judge, who may require such ratification at any time. The judge must not admit a power without the legal requisites, and the opposite party may always object to the power presented. The same power may be granted to several persons, but it must not provide that one cannot act without the concurrence of the others; if several present themselves to prosecute or defend the same matter, the judge will require them to select within three days the one to conduct the business, and if they do not agree, will himself make the selection. (Arts. 2382-2386.)

Art. 427. Special Clauses — Duties of Attorney.— An attorney (*procurador*) only needs a special power of attorney, or special clause, in the following instances: 1, To withdraw the

suit or defense; 2, to compromise; 3, to refer to arbitration; 4, to answer and propound interrogatories (*absolver y particular posiciones*); 5, to make transfer of property; 6, to make challenges (*recusar*); 7, to receive payments; 8, for other acts expressly provided by law. Upon acceptance of the power, which is presumed from its exercise, the attorney is bound: 1, To carry the suit through all its instances, unless the power is terminated as hereinafter provided; 2, to advance the costs incurred at his instance; 3, to perform, under the responsibility of a mandatary, everything necessary to his principal's interests, following his instructions where given, and if none, by such acts as the nature of the case requires.

An attorney or lawyer who accepts the mandate of one party cannot accept that of the other party even when he withdraws from the first; if he reveals to the opposite party the secrets, or furnishes him documents or data of his principal or client to his prejudice, he is liable for all losses and damages, besides the criminal penalties incurred. If he has just cause to withdraw from a case, he cannot abandon it without appointing another, if authorized to do so, or advising his principal so that he can appoint another; where he has appointed a substitute he may revoke it if so authorized. If a suit is declared null for want of power, the attorney, and the judge who admitted him to act as such, are personally and severally liable for all damages and losses caused to the co-litigant. A party may before final judgment ratify acts in excess of his attorney's powers. (Arts. 2387-2392, 2394-2396.)

Art. 428. Termination of Power.—The authority of the attorney is terminated: 1, By revocation, which may be done in any time or way which manifests the principal's intention to revoke it, as by himself acting in the business, or appointing another attorney for the same business, which revokes the former power upon notice to the attorney, but without prejudice to the attorney's rights, and the principal

may require the return of the power of attorney and of all documents relating to the business; 2, by the resignation of the attorney, who must, however, if injury may otherwise result, continue until another is appointed; 3, by the withdrawal of the principal from the pending action or defense, or by the loss of his "personality," or by the assignment on the record of his rights in the litigated matter, with notice as required by Art. 378; 4, by the "interdiction" of either principal or attorney; 5, by the expiration of the term or conclusion of the business for which the attorney was appointed; 6, by the death of principal or attorney, but where the principal dies, the attorney should continue if injury might result, until the heirs make other arrangements, within a brief period to be fixed by the judge if requested by the attorney; if the attorney dies, his heirs should notify the principal, and until another is appointed, do only such acts as may prevent any injury; 7, in the cases of absentees as provided in Art. 217. An act or contract made by the attorney after he knows his power has ceased, with a third person ignorant of the fact, binds the two former towards the latter, but the attorney is liable to his principal for all damages resulting. (Arts. 2393, 2397-2405.)

CHAPTER 3.

RENDERING PROFESSIONAL SERVICES.

Art. 429. Incidents — Fees.

Art. 429. Incidents — Fees.— Contracts for services in any scientific profession are governed by the rules of mandate, in the absence of any special provision. The parties may agree upon the compensation, but where no such agreement is made, and in the absence of a tariff of charges, the fees are regulated by regard of the custom of the place, the

importance of the work done or of the matter or case in which the services were rendered, and of the financial ability of the recipient and the reputation in such matters of the person rendering the services; such compensation should include expenses incurred in the matter, and in the absence of agreement, will be repaid, with interest from the time of the outlay; such payment must be made at the place of residence of the person rendering the services, as each service is rendered or when all is done.

Where the services are rendered in behalf of several, each is severally liable for the fees and expenses, but payment by one is full satisfaction; and where several perform the service in the same matter, each may recover for his own work, and regardless of the success of the matter or business, unless otherwise stipulated. If he cannot continue his services, he must advise the person employing him, being liable for damages resulting from failure to give timely notice; lawyers must also comply with the requirements of Article 427. One rendering professional services is responsible to those whom he serves only for negligence, want of skill (*impericia*), or fraud (*dolo*), besides being liable to the penalties imposed in case of crime by the Penal Code. (Arts. 2406-2415.)

CHAPTER 4.

“OFFICIOUS” AGENCY. (GESTIÓN DE NEGOCIOS.)

Art. 430. Definition — Incidents.

Art. 430. Definitions — Incidents.— Acts which a person volunteers, without express mandate, to perform in favor of another, who is absent or unable to act for himself, are called “officious,” and the actor an “officious mandatary,” the person for whom he acts being called the “owner of the business.” The actor (*gestor*) is liable to the owner and to third persons with whom he contracts in the former’s name,

unless he ratifies the acts, which has the same effects as an express mandate; if the owner ratifies and takes advantage of the act, he must indemnify the actor for any necessary expenses and for damages incurred in the matter, and must likewise reimburse him, although not ratifying his acts, for all expenses actually incurred where his object was to avert imminent danger and not to make gain. If the owner knew of the act and does not object before it is finished, he ratifies it, but is not liable to the actor if there is no profit made.

Where the owner disapproves the act, the actor must at his cost restore things to their former status and pay all damages caused by his fault, to the owner or third persons dealing with him in good faith; if the former condition of things cannot be restored, and the advantages exceed the disadvantages, the owner retains both; but if they do not exceed the disadvantages, he may require the actor to take over the business on his own account and indemnify all damages. One interfering in another's business against his express will is liable for all damages although accidental, unless he proves they would have occurred without his intervention. If he commences a matter he must continue it unless the owner otherwise disposes; and he must render true accounts of his acts and of all amounts received and expended. If he intervenes in the business because it is so connected with his own that he cannot handle one without the other, he will be considered as a partner, but the owner will only be liable to the extent of the advantages received. (Arts. 2416-2433.)

TITLE VII.

CONTRACTS FOR WORK AND SERVICE.

CHAPTER 1.

DOMESTIC SERVICE.

Art. 431. Nature and Incidents.

432. Duties of Master and Servant.

Art. 431. Nature and Incidents.— Domestic service is that temporarily rendered by one person to another with whom he lives, for such wages and on such terms as the parties agree, except as herein provided, or if no agreement, then for such wages as are customary in the place, considering the kind of work and the sex, age and aptitude of the servant, who is bound, if there is no agreement for stated services, to render such services as his health, strength and circumstances permit; a contract for perpetual service is void.

The contract is considered to be for a fixed term where it is for some definite object, as a journey, or a nurse during weening; if not for a fixed term, it may be terminated at will by either party upon eight days' notice, or immediately by the employer upon payment of eight days' wages, or a month's wages if the servant is twenty leagues from his home, unless otherwise agreed.

If for a fixed term, the servant cannot leave during the term without just cause, which is: 1, The necessity to perform legal obligations or those contracted before entering the service; 2, manifest danger of some considerable harm or ill; 3, failure of the employer to perform his obligations with the servant; 4, illness of the servant which prevents him from working; 5, change of domicile by the employer which does not suit the servant; in such cases the servant may recover

wages due, but if he leaves without just cause he loses his wages and is liable for the damages caused by his quitting.

The employer cannot discharge the servant during his term without just cause, which is: 1, Incapacity of the servant; 2, his vices, sickness or misbehavior; 3, insolvency of the employer; if the servant is discharged without just cause he is entitled to his wages in full. The death of either party terminates the contract, the servant or his heirs being only entitled to recover his wages to the time of the death. (Arts. 2434-2451, 2454.)

Art. 432. Duties of Master and Servant.—The servant is bound: To treat his employer with respect, and obey all his lawful orders not contrary to the contract; to perform his services faithfully and to the best of his ability; to take care of the master's property and as far as possible save it from harm; to pay any damages caused by his fault. The master is bound: To pay the servant's wages punctually, and not to impose work on him which endangers his health or life or are not embraced in the contract; to tell him of his faults, and if they are minor ones, may correct him as if he were his guardian; to indemnify him for any losses and damages suffered through the master's fault or on his account; to assist him and furnish him medical attendance in case of illness, and out of his wages, where he is unable to supply himself, and has no family or other recourse. The master may deduct from the wages at the time of payment and not afterwards, any damages caused by the servant's fault, being liable if he does so unjustly. All police regulations in regard to servants must also be observed. (Arts. 2452-2453, 2455-2457.)

CHAPTER 2.

WORK BY THE DAY.

Art. 433. Nature and Incidents.

Art. 433. Nature and Incidents.—Services by the day are those performed by one person for another, day by day, for a daily wage called “*jornal*”; the day-laborer (*jornalero*) must perform the agreed work as ordered by the employer, and if he does not, he may be discharged during the day, with pay for the time worked; the employer must pay the wages daily or weekly as agreed, or if no agreement, according to the custom of the place. The *jornalero* employed by the day or for the days necessary to perform a work, cannot quit work or be discharged without just cause, any dispute as to which will be decided by verbal suit; if the laborer violates this rule, he loses the wages due; if the employer, he must pay in full as if the work were ended.

If the work is interrupted by accident or *vis major*, the laborer is entitled to wages for the time worked; if he has worked for half the day he will be paid half wages; if for more than half the day, he will receive wages for a whole day. Where no fixed time or work is agreed on, the laborer may quit or be discharged at any time, without right to indemnity. The laborer is liable for the value of any instrument or object entrusted to him and lost or rendered useless, unless he proves it was not through his fault. (Arts. 2458–2468.)

CHAPTER 3.

CONTRACTS FOR WORK BY THE JOB AND PIECE.

Art. 434. General Rules.

435. Plans and Estimates.

436. Risks — Liabilities.

437. Delivery — Acceptance.

Art. 434. General Rules.—Contracts for work by the job (*á destajo*) may provide either: For the contractor to assume direction of the work for a fixed price and furnish the materials, or for his work or skill alone for a fixed fee; in case of doubt, the presumption is that he was to furnish services only for a fixed fee, where the contract concerns real estate, and was to furnish both services and materials if it relates to personal property. In the former case, regarding work on real property, the contract, if involving more than one hundred pesos, must be in writing, and contain a detailed description, and where required, a plan or drawing of the work; if such plans are not furnished, every controversy over the work will be resolved, in the absence of other proof, in favor of the owner. Where the work is contracted for a fixed price (*ajuste cerrado*), the contractor need not present accounts to the owner, but he must present accounts and vouchers where he is employed for a fixed fee.

Where the contractor undertakes a work for a fixed price, he cannot demand an increase, although the price of materials and wages is raised, nor even where the plans are altered or enlarged, unless authorized in writing and the price is stated; but where the contractor is only to furnish skill or work, the foregoing does not apply, and the owner alone is chargeable with the changes and difference of prices. Where the price is not fixed when the contract is let, and the parties do not afterwards agree upon it, the price will be governed by the tariff of fees, or if none, will be fixed by experts; when once paid and received, no further claims can be made over it unless such reservation is expressly made. (Arts. 2469–2473, 2478–2479, 2492–2494.)

Art. 435. Plans and Estimates.—Plans and estimates cannot be charged extra beyond the fees for the work, except where the work is abandoned by the owner, unless it was agreed that no charge should be made for plans if they were not accepted. Where several experts submit plans

knowing that only one is to be selected, neither can charge for his plan unless otherwise agreed, except the author of the one accepted, in the event that it is used by another artist in doing the work; also the author of unaccepted plans may recover their value where they are used by another, even with modifications of detail, in doing the work. (Arts. 2474-2477.)

Art. 436. Risks — Liabilities.— Where the contractor is to furnish materials, he assumes all risks of the work until its delivery, unless the owner delays in accepting it or it is otherwise agreed; but where he only furnishes his services, it is at the risk of the owner, except for the fault or want of skill of the contractor, and the loss is presumed to be from his fault where the work is done by him and is still in his control; he is also liable for loss due to bad materials, unless he notified the owner in good time of the danger from this cause, and except in the last instance he is not entitled to any compensation. The contractor or architect of a building, whether furnishing the materials or not, is responsible for ten years from the day of delivery, if it is damaged through defects of construction or of the soil, unless he had notified the owner of such defects; such liability does not attach, unless otherwise provided, to architects selling an already-built house, or to other artisans after the work is delivered and paid for. (Arts. 2480-2486.)

Art. 437. Delivery — Acceptance.— One contracting to do work by piece or measure may require the owner to receive it in parts and make payment upon delivery as they are received, and payment is considered approval and acceptance of the same; but advances made on account of the price are not so regarded unless it is agreed that they may be applied in payment of the part delivered; but this rule does not apply where the parts delivered are useless without the whole taken together; the work must be finished within a reason-

able time, in the judgment of experts, if no time is fixed in the contract. The contractor for a lump price (*ajuste cerrado*) must begin and finish the work in the time agreed, or within a reasonable time in the opinion of experts if none is fixed, and must deliver the work within like time, being liable for damages for failure to deliver in due time; where it is for a fixed fee it must be finished when the owner requires provided he allows sufficient time. The contractor cannot have the work done by another, without the owner's consent, in which event the contractor is liable for the work done; and he is liable for the work done by those he employs in it. The price must be paid upon delivery unless otherwise agreed.

Workmen employed by the contractor, and those who furnish him material for the work, have no action against the owner, except to the extent of any balance due the contractor when the work is finished.

The owner may abandon the work begun, upon paying the contractor, under a fixed price contract, for his work and expenses and all profits he would have earned, or upon paying all fees due and a month extra to the contractor on fixed fees; he may afterwards complete the work with other contractors using the original plans. The contract may be rescinded by the contractor's death, or by his being prevented without his fault from continuing the work; in such case the owner will pay for the work done and expenses incurred up to such time; the contract is not rescinded by the owner's death, and his heirs are liable for the performance of the contract.

If the work is not done according to contract, or was agreed to be done to the entire satisfaction of the owner, the rules stated in Arts. 338 and 339 apply. The contractor has a lien on personal property for the price and expenses, as provided in Art. 726. The contractor must observe the police regulations in regard to the work and pay any fines

imposed on account of them. (Arts. 2487-2491, 2495-2509.)

CHAPTER 4.

APPRENTICESHIP. (APRENDIZAJE.)

Art. 438. Form of Contract — Incident

Art. 438. Form of Contract — Incidents.— The contract of apprenticeship, made between persons of lawful age or affecting minors legally represented, must be in writing before two witnesses; if any party cannot sign, a person other than the witnesses will sign for him in his presence; the contract is void if it does not fix the time the apprenticeship is to continue; it must also state the time or circumstances when the apprentice will begin to receive compensation, until which time the instruction given him is sufficient compensation. If he is discharged without just cause, as stated in Art. 431, before the end of his contract, the master must indemnify him, at the rate of the compensation he is receiving, if any, till the end of the term, or if he does not receive any, then such as the judge may award. If the apprentice quits before the end of the term, without just cause as stated in Art. 431, he or the person who contracted for him is liable to pay the damages caused; if the apprentice is a minor and not legally represented, the master only has recourse to criminal action, besides the civil liability imposed by the Penal Code. (Arts. 2532-2539.)

CHAPTER 5.

BOARD AND LODGING. (HOSPEDAJE.)

Art. 439. Contract — Incidents

Art. 439. Contract — Incidents.— The contract covers either lodging and provisions, or lodging alone, furnished by

one person to another for an agreed price; the contract is implied where the host keeps a public house for that purpose, and where implied, it is governed by the written regulations which the host must always keep posted in a visible place; if express, the terms agreed upon govern.

Inn-keepers and the owners of hotels and boarding-houses must conform to the administrative regulations, under the penalties therein provided; they are civilly liable in the terms imposed by the Penal Code.¹ (Arts. 2540–2544.)

TITLE VIII.

BAILMENTS.² (*Depósito.*)

(*Código Civil*, Arts. 2545–2593.)

CHAPTER 1.

DIFFERENT KINDS OF BAILMENT IN GENERAL.

Art. 440. Nature and Incidents of Contract.

441. Rights and Duties of Bailor and Bailee.

442. Return of Deposit — Incidents.

443. “Sequestro.”

Art. 440. Nature and Incidents of Contract.—Bailment (*depósito*) in general is the receipt of another's property under the obligation to keep it in custody and return it in kind, without making any kind of use of it; it is by its nature gratuitous, but compensation may be expressly stipulated. It is called simply “*depósito*” where made by the owner; where made by judicial authority or by parties litigant it is called “*sequestro*.” The bailor (*deponente*) must require a written statement of the quantity, kind and description of the thing deposited, signed by the bailee (*depositario*); otherwise he must prove the bailment and

¹ See Arts. 1017–1018.

² See Commercial Bailments, *post*, Art. 603, *et seq.*

any tampering with it; a bailee convicted of denying or tampering with the deposit is subject to the penalties of the Penal Code.

Anyone of legal capacity may make a bailment, but incapacity of one of the parties does not relieve the other of the obligations between bailor and bailee; if the latter is under disability he is not liable in damages, but must return the deposit, or whatever he received for it if he has disposed of it; and where the disability is not absolute he may be held for damages if he acted in fraud or bad faith. The incidents of what was formerly called “irregular deposit” are now governed by the rules in regard to *censo consignativo* and *mutuo* respectively. (Arts. 2545–2555.)

Art. 441. Rights and Duties of Bailor and Bailee.—The bailee must keep the deposit as he would his own property and return it on demand with all its increase; he is not liable for unavoidable accident and loss, unless expressly agreed or where it befell while he delayed to return the deposit. He can only use the deposit by express consent of the owner, being liable in damages if he does so; where such consent is given, the nature of the contract is changed, becoming either *mutuum*, *commodatum*, *usu* or *usufructu*. The bailee must return the deposit in the same condition in which he received it, whether sealed or otherwise, and is also liable for damages, unless he proves that the breaking or opening was without his fault. If the deposit be of money the bailee must pay interest on any amounts he has used from the time he used it, and for any time he delays in returning the deposit. (Arts. 2556–2567.)

Art. 442. Return of Deposit — Incidents.—The deposit must be returned only to the person who made it or in whose name it was made, or to one designated to receive it; where it was deposited by several bailors, it cannot be delivered without the consent of the majority in interest, unless

at the time the deposit was made it was agreed that it might be returned to any of them; or, where the part belonging to each was designated at the time, each may receive such part.

Where the deposit was made in the name of one under disability by his legal representative, it will be returned to the latter, or to the owner if his disability has been removed and judicially declared, or the representation has ceased; if the bailor becomes under disability after the deposit, it will be delivered to his legal representative.

The deposit must be returned at the place agreed, or if not agreed, in the place where it is, at the bailor's expense, and whenever demanded, although the time agreed on has not expired, or with just cause the bailee may return it before the time agreed, or at any time if none is fixed, giving reasonable notice in the proper case. If the bailor refuses to receive it, the bailee may deposit it as provided in Art. 366; but he is excused from returning the deposit where he is judicially ordered to retain or attach it. The bailor must indemnify the bailee for any expenses or damages sustained in keeping the deposit; the bailee cannot retain the deposit if such payment is not made, except by order of court at his instance; nor can he retain it as security for any other debt against the bailor.

If any dispute arises between the bailor and bailee as to the deposit, the latter should secure an order from the judge to retain or deposit it. If the bailee learns that the thing deposited is stolen property and who the true owner is, he must with due secrecy notify the owner or the proper authority; if within eight days he is not judicially ordered to retain or deliver the deposit, he may return it to the bailor and be discharged from all responsibility. (Arts. 2568-2587.)

Art. 443. "Sequestro."—The *sequestro* is conventional where the litigants deposit the thing in suit with a third person to abide the decision; the holder must retain it until

final judgment, unless by consent of the parties or for good cause allowed by the judge; with these exceptions, all the rules of bailment apply to both conventional and judicial sequestration, except as otherwise provided in the Code of Civil Procedure; in both the holder holds possession for the party to whom the final judgment awards the deposit. (Arts. 2588–2593.

TITLE IX.

GIFTS. (*Donaciones.*)

CHAPTER 1.

GIFTS IN GENERAL.

- Art. 444. Definitions — Kinds.
- 445. Form — Acceptance.
- 446. Incidents of Gifts.
- 447. Who May Make and Receive Gifts.
- 448. Revocation of Gifts.
- 449. Reduction of Gifts.

Art. 444. Definitions — Kinds.— Donation is a contract between living persons, by which one transfers to another, gratuitously, a part or all of his present property; it cannot embrace future property; all the general rules of contracts apply to gifts except as herein modified. The donation may be *unconditional* (*pura*) and absolute; *conditional*, where it depends upon some uncertain event; *onerous*, where some encumbrances are imposed, and only the clear value is considered as given; and *remuneratory*, where made in consideration of services received by the donor and not implying a debt. The gift is irrevocable after it is accepted and the donor has notice of the acceptance, except as provided by law. Gifts *causa mortis* are governed by the rules on lega-

cies, *post*, Arts. 517–525, and gifts between husband and wife, by the provisions of Arts. 193–194, *ante*. (Arts. 2594–2603.)

Art. 445. Form — Acceptance.—A donation of personal property under two hundred pesos may be verbal; if exceeding that amount, or of real estate in any value, it is invalid as to third persons unless made by *escritura pública* and duly registered; the *escritura* must state specifically the value of each article, the description of the real estate, and the conditions imposed on the donee.

The acceptance must be in the same *escritura* or another one, and in the donor's lifetime; where accepted in a separate *escritura*, due notice must be given the donor and the fact of notice recited in both *escrituras*; the acceptance is void if not made by the donee in person, or by attorney with special power for the case or with general power to accept donations. (Arts. 2604–2612.)

Art. 446. Incidents of Gifts.—A gift of all the donor's property, without reserving in ownership or usufruct enough to live according to his circumstances, or which conflicts with his legal obligations of support to his ascendants, descendants and wife, is void; a gift of property includes all rights and actions concerning it.

Where the donation is of all property, to take effect at death, and some part is reserved to be conveyed by will, without specifying what part, one-third of the property given is taken to be reserved; if the donor disposes of his legal third in said form, the third part of that is understood to be reserved; but if he die without disposing of the property reserved and it is yet in his possession, his legal heirs succeed to it, or if none, then the donee, except as may be otherwise provided in the deed of gift.

The ownership may be given to one person and the usufruct to another, the rights of the parties in such case being

determined by the rules applicable to usufruct. A gift to several donees jointly does not carry the right of accretion unless expressly declared; the donor is only liable for "eviction" of the gift where he expressly so obligates himself, except in case of dowry; but in case of eviction the donee is subrogated to all the rights of the donor.

Where the gift is charged with the payment of the donor's debts, only those actually existing at its date are included; if the gift is of certain specified property, the donee is only liable for the donor's debts where the property is mortgaged or the gift was made in fraud of his creditors; where the gift is of all the donor's property the donee is liable for all his previously contracted debts to the extent only of the property given; the foregoing rules apply in the absence of express declaration by the donor accepted by the donee. Arts. 2613-2627.

Art. 447. Who May Make and Receive Gifts.—All who can contract and dispose of their property may make gifts, and all not specially forbidden by law may accept them, including quick but unborn children within the terms of Art. 203; married women, minors and others under disability are subject in this respect to the special rules in their case. Gifts to persons forbidden to receive them, made under guise of some other contract, are void, whether made directly or through an "interposed" person, all ascendants, descendants or the husband or wife of the inhibited person being so considered. (Arts. 2628-2632.)

Art. 448. Revocation of Gifts.—Gifts can be revoked or annulled as other contracts. Where made by a person having at the time no children, they may be revoked by him upon the subsequent acquisition of children, either legitimate, legitimated, acknowledged natural or designated spurious ones, born as above provided; the right of revocation in such cases cannot be waived; if the legitimate child is

posthumous, the donation is entirely revoked. In the other cases, if the gift disables the father from his duty of support, and he does not revoke it, it must be reduced, unless the donee assumes and gives security for the obligation to provide aliments to the children and others entitled thereto. Where the gift is less than two hundred pesos, or is antenuptial, or made between husband and wife during marriage, it will not be revoked by the birth of children.

Where the gift is revoked on account of subsequent children, the property donated, or if it has been disposed of before their birth, its value as of the time the gift was made, must be returned to the donor; if the property has been mortgaged the mortgage will subsist, but the donor may require it to be redeemed; if subject to any usufruct or easement, these are extinguished. If the property cannot be restored in kind its value as of the time of the donation may be recovered. The donee is entitled to all the "fruits" of the property donated up to the time he is notified of the revocation or to the day the posthumous child was born. The action for revocation on account of subsequent children can only be brought by the donor or by the posthumous child, within twenty years after its birth; but that for reduction may be brought by any of the descendants above mentioned.

The gift may be revoked by the donor for failure to comply with any condition on which it was made, subject to the same rules of restitution as above, except that the "fruits" and interest must also be restored. The revocation may also be made on account of ingratitude: 1, If the donee commits any crime (*delito*) against the person, honor or property of the donor; 2, or accuses him judicially of any crime, although he proves it, which might be *ex officio* prosecuted, unless such crime is against the donee himself or his wife or direct relative; 3, or if the donee refuses him assistance, according to the value of the gift, where the donor becomes stricken with poverty; the same rules of restitution apply in such cases, except that only mortgages registered before

the suit for revocation will subsist, and only "fruits" received after suit must be restored. The action for revocation for ingratitude cannot be waived in advance, and it prescribes within one year after the donor had knowledge of the fact; the action cannot be brought by the heirs of the donor if he could have done so and did not, nor against the heirs of the donee unless it was begun during the latter's lifetime. (Arts. 2633-2650.)

Art. 449. Reduction of Gifts.—Gifts which render the donor unable to meet his obligation to furnish aliments are "inofficious" and must be revoked, but where they are of greater value than the amount of the obligation, they will only be reduced to the extent necessary to meet the obligation, observing the rules of restitution above stated; but where the donor is dead, the gift will be neither revoked nor reduced if the donee assumes and gives security for discharging the obligation. The reduction is begun with the gift of most recent date, proceeding to others in the order of their dates if the first is exhausted; if several are of the same date they will be reduced pro rata. The value of the gift at the time it was made, if consisting of personal property, will govern the reduction; if it consists of real estate subject to ready division, the reduction will be made in kind; if not divisible, and the amount of the reduction exceeds half its value, the balance will be paid the donee in money; if not exceeding half the value, the donee will pay the balance in money. Whether revoked or reduced, the donee is only liable for the "fruits" of the property from the time of suit. (Arts. 2651-2660.)

TITLE X.

LOANS. (*Préstamo.*)(*Código Civil*, Arts. 2661–2700.)

CHAPTER 1.

LOANS IN GENERAL.

Art. 450. Definition — Incidents.

451. *Commodatum* — Incidents.

452. Simple “*Mutuum*” — Incidents.

453. “*Mutuum*” with Interest.

Art. 450. Definitions — Incidents. — Loan embraces all gratuitous granting for a definite time and purpose of non-consumable (*no fungibles*) things to be used and returned in kind, which is called *comodato*, and that of consumable (*fungibles*) things, gratuitously or upon interest, to be returned by a like amount of the same kind and quality, which is called *mutuo*. All persons not under disability may make and receive loans, and the rights and obligations arising therefrom are transmissible to their heirs and representatives. The nullity or rescission of the contract by reason of the subject-matter is governed by the rules applicable to other contracts; if availed by reason of incapacity, a surety is not relieved unless he proves that at the time he became such he was ignorant of the fact. (Arts. 2661–2665.)

Art. 451. “Commodatum” — Incidents. — The lender (*comodante*) retains the ownership, and the borrower (*comodatario*) acquires the use, but not the “fruits” or increase of the thing loaned; if he pays anything for its use, the contract ceases to be a *comodato*; he can only use it for the purpose agreed, and must care for it as for his own

property, being otherwise liable for damages; if loaned for his personal use, his heirs cannot continue to use it; if he uses it for another purpose or longer than agreed, he is liable for its loss even by accident. If lost by accident, which the borrower could have avoided by using his own property, he is liable, and if its value were agreed upon when loaned, he must pay such price unless otherwise agreed. If it is damaged only by the use for which it was loaned and without his fault, the borrower is not liable; he is not entitled to repayment of the ordinary costs of its use and keeping, nor to hold it for such expenses or any other claim he has against the lender; but the latter should reimburse him for any extraordinary and urgent expenses incurred in its preservation. If there are several borrowers they are severally bound to the same obligations.

The borrower must return the property loaned at the expiration of the time or purpose for which it was loaned, or upon demand if none such were fixed; the borrower must prove that such time or purpose was agreed upon. The lender may require the return of the property before due if he has urgent need for it or proves that there is danger of its loss if left with the borrower. If the property loaned has such defects as make it dangerous to the borrower, the lender is liable for damages if he knew of them and failed to warn the borrower. (Arts. 2666-2683.)

Art. 452. Simple "Mutuum"—Incidents.—The borrower (*mutuatario*) becomes the owner of the thing loaned, which is at his risk after delivery; he must return a like amount of the same kind and quality as he received, at the time and place agreed; if no place were agreed, then at the place he received it, if goods, and at the lender's domicile if money. If no time was agreed upon, the return shall be made as follows: If the borrower is a farmer or anyone bound to receive produce of the kind, and the loan consists of grain or other products, it must be returned in the same kind

and quantity at the next harvest; in all other cases the loan must be returned upon demand after a reasonable time; the debtor is liable for interest after default in payment. If it is not possible to make restitution in kind, the value of the property at the time and place loaned, as fixed by experts, will be paid unless otherwise agreed. If the loan was of a particular kind of money it must be repaid in the same kind, whatever its value at the time of repayment; or if the same kind cannot be repaid, current money of the value of that received must be repaid. The lender (*mutuante*) is liable for dangerous defects in the thing loaned, as provided in the preceding Article. Where the contract provides for repayment when the debtor is able, the courts will fix the time according to the circumstances, the creditor proving that the debtor has the means. (Arts. 2684-2693.)

Art. 453. "Mutuum" with Interest.—Interest may be stipulated on the loan of either goods or money. Legal interest is that fixed by law at the rate of six per cent. a year; conventional interest is that fixed by the parties and may be less or greater than the legal rate. The rate of conventional interest must be included in the contract of loan, and is proved in the same way if not exceeding the legal rate; if greater than the legal rate it can only be proven by written instrument. Partial payments will be applied first to interest due. Compound interest cannot be charged unless expressly agreed in the contract, which shall state the times when it is to be compounded; receipt of the principal without claim for interest raises the presumption of its payment. (Arts. 2694-2700.)

CHAPTER 2.

MERCANTILE LOANS.

(*Código de Comercio*, Arts. 358–370.)

Art. 454. Loans — Repayment.

455. Interest.

456. Loans on Collateral.

Art. 454. Loans — Repayment.— A mercantile loan is one expressly made for commercial, and not individual, purposes; loans between merchants are presumed to be mercantile. Where the loan is of money, it is discharged by the repayment of a sum equal to that received according to the monetary laws in force in the Republic at the time of repayment; this provision cannot be waived. If payment is contracted to be made in a specified kind of foreign money, the lender bears any loss or gain due to its change in value. A loan of securities is repaid by delivery of an equal number of the same kind and value, or their equivalent if the former are extinguished, unless otherwise agreed. If the loan were of things in specie, the debtor must return, unless otherwise agreed, a like amount of the same kind and quality, or their value if the things are unobtainable. Where the loan is for an indefinite time, payment cannot be enforced until thirty days after demand, either judicially, or before a notary and two witnesses. (Arts. 358–360.)

Art. 455. Interest.— Every form of compensation to the lender agreed upon in writing is considered as interest; if not paid when due, it does not draw interest unless so stipulated. Debts not paid when due draw interest from the following day at the rate agreed, or in default of such agreement, at six per cent. per annum.

If the loan were of goods, the interest will be computed upon their market value at the place and on the day after

they should be returned, or as fixed by experts if the goods are no longer on the market. Where the loan was of securities, the interest upon default will be the same as that borne by the securities, or if they do not bear interest, then at six per cent. based on their value on the stock exchange if quoted, otherwise by their value in the market on the day after the maturity of the loan.

The receipt of the principal by the creditor without demanding interest extinguishes the interest. Payments on account without specifying their application, will be first applied to interest and afterwards to the principal. (Arts. 361-364.)

Art. 456. Loans on Collateral.—Loans made on collateral securities of quotable value, evidenced by a broker's policy, are always mercantile; the lender has a lien on the securities pledged under the provisions of this chapter for the payment of the debt in preference to all other creditors, who can only obtain possession of them by paying the indebtedness. Such lien is only upon the same securities pledged; for which purpose, if payable to bearer, their numbers, series and value must be stated in the policy; if they are registered or assignable, they must be endorsed to bearer, and in addition to the above identification, the policy will recite that such endorsement does not operate to pass the title. If desired, the parties may deposit the securities in an institution of credit instead of delivering them to the lender.

Unless otherwise agreed, the creditor may proceed without demand on the debtor, to sell the pledged securities through two brokers, or two merchants of the place if there are no brokers, who shall first certify the maturity of the debt. Listed securities payable to bearer, pledged under this chapter, cannot be recovered from the lender unless by repaying the debt, but the owner wrongfully deprived of them has his action against the wrongdoers. If the securities pledged

should become extinguished the debtor may substitute others of like value, unless otherwise provided. (Arts. 365–370.)

TITLE XI.

CONTRACTS OF HAZARD.

(*Código Civil*, Arts. 2701–2704, 2772–2810.)

CHAPTER 1.

GENERAL PROVISIONS.

Art. 457, Definition — Kinds.

Art. 457. Definition — Kinds. — Contracts of hazard (*contratos aleatorios*) are reciprocal agreements the effects of which, in respect of gains or losses to one or both parties, depend upon an uncertain event. Contracts of hazard are: 1, Insurance contracts; 2, bottomry contracts or maritime risks; 3, gaming and bets; 4, life annuity contracts; 5, mining companies; 6, purchase of expectancies; all such contracts are considered as conditional donations if the beneficiary is not required to pay or perform anything on his part upon the happening of the uncertain event. Maritime loan contracts are governed by the Commercial Code, and mining companies by the special Mining Law. (Arts. 2701–2704.)

CHAPTER 2.

GAMING AND BETTING. (JUEGO Y APUESTA.)

Art. 458. General Rules.

Art. 458. General Rules.— All games in which the gain or loss depends exclusively on chance (*suerte*) without the

intervention of skill or lawful means known to both parties, are prohibited, and bets of like kind are void, and debts so contracted are uncollectible. Debts contracted in lawful games, and bets made in good faith outside of gaming, up to one hundred pesos, and all prizes drawn in authorized lotteries, are valid and collectible at law; a bet larger than allowed by law cannot be split into several smaller ones and sued on, and a party doing so to evade the law loses all rights and is subject to the penalties of the Penal Code. Money lost in gaming and voluntarily paid, cannot be recovered by the loser, unless the other party was guilty of deceit or fraud, or for some other reason the contract is not valid under general rules, or unless where it was lost at a prohibited game; a person whose money is bet and lost by another without his consent may recover it. A bet is in bad faith where one of the parties knew the truth when the bet is made. It is not necessary that both parties to a bet risk equal amounts; if one fails to do what he should in order to obtain a result, he loses the bet. (Arts. 2772-2782.)

CHAPTER 3.

LIFE ANNUITIES. (RENTA VITALICIA.)

Art. 459. Contract — Incidents.

460. Performance of Contract.

Art. 459. Contract — Incidents.— A life annuity is a contract of hazard by which one party undertakes to pay a pension or annual income during the life of one or more specified persons, either upon a valuable consideration of money or property, or gratuitously by donation or by will; the formalities required for the making of the contract must be observed. The annuity may be created upon the life and in favor of the person who pays for it, or of one or more third persons; where in favor of a third person it is a dona-

tion, but is only subject to the rules on that matter when it must be reduced or annulled. The rate of interest shall be established in the contract, which is void if the person on whose life it is based has died before it was executed, or the beneficiary dies within the term fixed in it, which cannot be less than thirty days after its date. (Arts. 2783-2792.)

Art. 460. Performance of Contract.—The beneficiary of an annuity created for a consideration may demand the rescission of the contract if the obligor does not furnish or preserve the securities stipulated; if created by will without designation of specific property, the beneficiary may require the heir to designate sufficient property and mortgage it. Upon failure to pay the annuities, the beneficiary cannot demand the return of the money or property, but he may sue the debtor in executive action for the annuities due and compel him to secure the future ones; the payor cannot relieve himself by offering to return the capital, but must perform the contract strictly, unless the offer is voluntarily accepted.

Only the grantor of a gratuitous estate in his property can provide in the grant that it shall not be subject to the claims of third persons, except as to taxes. Where created for support (*alimentos*) it is only subject to execution so far as in the opinion of the judge it exceeds the amount necessary for such purpose considering the circumstances of the beneficiary.

A life annuity upon the life of the beneficiary himself is only extinguished by his death; if upon the life of a third person, it does not cease with the beneficiary's death, but passes to his heirs, and is only extinguished by the death of the person on whose life it is based; the beneficiary can only demand the income upon proof of his own life or that of the person on whose life it is based. The annuity for the year of the beneficiary's death will be paid proportionally to the days he lived, unless it is payable periodically in ad-

vance, in which event the entire amount of any period begun during his life will be paid. If the payor of the annuity causes the death of the beneficiary or of the person on whose it is based, he must return the capital to the heirs. (Arts. 2793-2805.)

CHAPTER 4.

PURCHASE OF EXPECTANCIES. (COMPRA DE ESPERANZA.)

Art. 461. Contract — Incidents.

Art. 461. Contract — Incidents.— Purchase of expectancy, so called, has for its object the future “fruits” of a thing or the uncertain results of an act, which may be estimated in money. The seller who alone and without previous agreement with the buyer, does the act whose result is expected, can recover the price only when the result is obtained; if he does the act with the agreement of the buyer, he may recover the price whether he obtains the result or not, if he does the act in the manner agreed. The buyer always assumes the risk of loss. The rules of *compra-venta* otherwise apply to the purchase of expectancies. (Arts. 2806-2810.)

TITLE XII.

ANNUITIES. (*Censos*.)

(*Código Civil*, Arts. 3066-3150.)

CHAPTER 1.

GENERAL RULES.

Art. 462. Definitions.

463. *Censo Consignativo* — Special Rules.

Art. 462. Definitions.— *Censo* is the right acquired by

one person to receive an annuity from another in consideration of a sum of money or a piece of real estate delivered to the latter. It is called *consignativo* where the payment of the annuity is charged upon an estate the title of which is retained by the party who must pay it, who is called the *censatorio*, the party receiving the annuity being called the *censualista*.

The *censo* is called *enfiteútico* where the party receiving the estate acquires only the right of possession and use while he pays the annuity, the title remaining in the owner who receives the annuity; the recipient of the annuity is called the owner (*dueño*); the party paying it is called the *enfiteuta*.

If created for the life of one or more persons, the *censo* is governed by the rules of the life annuity (*renta vitalicia*); where the fee of real estate is given to another, with the reservation of an annuity, the contract is considered as a sale on time, which cannot be greater than ten years, and is governed by the rules of *compra-venta*. The contract formerly known as "irregular deposit," and all money charges upon real estate are hereafter classed as "*censo consignativo*" and governed by the rules of this Title; if no rate of interest is agreed they shall pay six per cent. The *censos* are always subject to redemption, any stipulation to the contrary being void, but cannot be redeemed partially unless expressly agreed.

The capital cannot be demanded before the time fixed, unless the debtor becomes insolvent or fails to pay one annuity, which must be paid at the times stated, or at the end of each four months if not stated. Upon receipting for payments of annuities, the beneficiary may require a voucher from the obligor showing the payment. The *censo* is void if not created by *escritura pública*; the capital prescribes in twenty years, the annuities in five years from maturity. Actions to recover annuities in any amount must be by verbal suit according to the Code of Civil Procedure. Except as

herein provided, the *censo* is subject to the general rules as to mortgages and classification of creditors; those secured by mortgage enjoy the preference given, those unsecured come under the fourth class. (Arts. 3066-3085.)

Art. 463. Censo Consignativo — Special Rules.—The annuities must be paid in money and of the kind agreed. The parties may fix the time for redemption, with or without notice, which must not exceed ten years; if longer, it is only valid as a personal obligation; if secured by mortgage, the general rules as to its extension and preference apply.¹ The general rules relating to the destruction or insufficiency of mortgaged property apply to the *censo*; ² if the debtor has other property he must make it good; if he has no means to make good a partial deficiency occurring without his fault, he may ask the proportionate reduction of the annuity as fixed by experts, named one by each party, or release his liability by assigning the property to the beneficiary; but if the loss occurred through his fault he cannot do so except by express consent.

If the mortgaged property is entirely destroyed or made worthless, and the debtor is insolvent and cannot replace the security, the *censo* is extinguished as a real, but continues as a personal, obligation against the debtor, unless otherwise agreed; if the estate is restored by the debtor himself the *censo* is revived, but the annuities will be paid only from the time of restoration, if the debtor was without fault, otherwise all must be paid; if the remains of the property destroyed are conveyed, the *censo* will be revived proportionally to the price received for it. (Arts. 3086-3098.)

¹ See Art. 411.

² See Art. 409.

CHAPTER 2.

THE CENSO ENFITÉUTICO.

Art. 464. Contract — Incidents.

465. Same — Rights and Obligations.

466. Sale — *Derecho del Tanto*.

467. Prescriptions.

468. Reduction — Rescission.

Art. 464. Contract — Incidents.— The nature and amount of the annuity may be such as the parties agree upon, except that they must be paid in money if the estate is urban or a building site, and the so-called “*laudemio*” is abolished; the annuities must be paid fully and punctually, at the time and place agreed; those due for the last five years are debts of the first class; if not paid for three years, or the *enfiteuta* wastes the estate in one-fourth of its value, the owner may declare the estate forfeited without judicial demand. If no time of payment is agreed, the annuity, if in money, must be paid at the end of each year from the date of the contract, if in produce, at the end of each harvest; if no place is stated, at the owner’s residence if he or his procurator lives in the district where the land lies, or at that of the debtor if the former does not live in the district. Anyone who can contract and convey his property can create an “*enfiteusis*,” but if married, only in the cases and on the conditions in which the law permits alienations; and all able to contract may accept it, except husband and wife, between themselves, unless having legal separation of property, those in the fiduciary relations mentioned in Art. 471, and corporations and public establishments.

Only alienable real estate is subject to *enfiteusis*, and that of minors and others under disability must be judicially authorized upon application of both guardian and curator with the intervention of the *Ministerio Público*. The property must be clearly described and identified, and appraised by

deduction of the value of the fee and capitalizing the annuity to be received for it at the rate of interest agreed, or at six per cent. if not agreed, the survey and appraisement to be made by experts named by the parties and their report to be inserted in the *escritura* of the contract. Arts. 3099-3108, 3117-3126.)

Art. 465. Same — Rights and Obligations.— The *enfiteuta* has the right to use and dispose of the estate as his own except as herein restricted; he must pay all real and personal taxes imposed on account of the estate, but may deduct the amount paid from the annuity; he may mortgage or otherwise encumber the property, but if done without the consent of the owner the encumbrance is discharged if the property reverts to the owner; and he may freely transfer or exchange the property, but the grantee must notify the owner within sixty days from the conveyance, or he will be severally liable with the *enfiteuta* for the payment of the annuity.

The *enfiteusis* may be divided, subject to the rules governing the division of mortgaged property; ³ if divided into lots with the owner's consent, each lot constitutes a separate *enfiteusis*, and is only liable for its ratio of the annuity; the division must be made by experts named by the parties, whose report, and the express consent of the owner, must appear by *escritura pública*; the experts may increase the amount of annuity on each of the new *enfiteusis* to compensate for the increased trouble of collection.

The *enfiteusis* is hereditary, and unless the heirs otherwise agree, will be divided among them as above provided; if they do not agree upon division, they may select one by agreement or lot to continue the contract, and if none accepts, it will be sold and the proceeds divided; if there are no heirs or legatees the property reverts to the owner. (Arts. 3109-3116, 3129-3133.)

³ See Art. 408.

Art. 466. Sale—Derecho del Tanto.—If the *enfiteuta* is disturbed in his rights by a third person disputing the title and the validity of the *censo*, he must notify the owner of the suit or he loses his action against him for any damages suffered by eviction; the owner may alone defend the suit. If the owner or *enfiteuta* wishes to dispose of his interest in the estate, the other has the *derecho del tanto*; the party wishing to sell must give the other notice of the definite price offered, and unless the latter exercises the right within thirty days after the notice, the former may freely dispose of his interest; if the latter exercises the right the *censo* is extinguished; this right applies even to judicial sales, and if no bidder offers, the owner may ask the adjudication of the property as provided in the Code of Civil Procedure. If the *enfiteuta* fails to give the notice required, the sale is void and the owner may recover the estate by forfeiture (*comiso*); where the owner fails to give such notice, the sale is valid, but he is liable for damages to the *enfiteuta*; or if the sale was by collusion with the purchaser, the *enfiteuta* may recover the property; the suit will be against the owner alone if he only is at fault, and against the owner and purchaser if there was collusion. Where the *enfiteusis* is upon several properties, the *tanteo* must be applied to all. (Arts. 3127–3128, 3134–3141.)

Art. 467. Prescriptions — Actions. — Annuities overdue more than five years are only recoverable by personal action, where the *censo* is created by writing signed by the *enfiteuta* and two witnesses or acknowledged before a notary; the *enfiteusis* may prescribe according to the general rules of prescription. The action for forfeiture (*comiso*) prescribes in one year from the last execution or the date of the judicial sale, or after knowledge of the waste committed, respectively. (Arts. 3142–3143, 3146.)

Art. 468. Reduction — Rescission.— If the estate is entirely

destroyed or rendered worthless by force or accident, the contract is extinguished; if only partially, the *enfiteuta* may require the owner to reduce the annuity, and if he refuses, may surrender the *enfiteusis* and be released. Where by great drought or accidental destruction of crops, not enough remains after deduction of costs of seeds and cultivation, to pay the annuity, the *enfiteuta* is released from paying the balance if before harvesting the crop he notifies the owner, unless otherwise provided in the contract. Whenever the contract is rescinded the owner must reimburse the *enfiteuta* for all existing improvements made by him which increase the value of the estate, but the latter cannot retain the property until payment. (Arts. 3144-3145, 3147-3150.)

TITLE XIII.

CONTRACTS OF PURCHASE AND SALE.

(*Compra-venta.*)

(*Código Civil*, Arts. 2811-2929.)

CHAPTER 1.

GENERAL PROVISIONS.

Art. 469. Contract — Incidents.

470. Subject-matter of Contract.

471. Who may Buy and Sell.

472. Form of Contract — Registry.

473. Judicial Sales.

474. *Derecho del Tanto*, or Pre-emption Right.

Art. 469. Contract — Incidents.— *Compra-venta* is a contract by which one party agrees to transfer a right or deliver a thing, and the other to pay a certain price and in money; if the price is to be paid part in money and part in other prop-

erty, the contract is a sale if the part paid in cash is equal to or greater than the value of the other property; if the cash part is less, it is an exchange (*permuta*). The price must always be fixed and cannot be left to the discretion of one party; but the parties may agree that it shall be the price current at a certain time and place, or that a third person may fix it; if the latter fixes the price it is binding on the parties unless by mutual consent; if he fails to fix it the contract is without effect unless otherwise agreed. The price of produce and grain sold on credit to consumers cannot exceed the highest price current in the place between the delivery and the end of the next harvest.

The sale is complete and binding between the parties as soon as the thing and the price are agreed upon, although the former is not yet delivered nor the price paid; but that the simple promise of sale may have legal effect, the thing sold, if real property or personal property not consumable in use, must be designated, or if it is consumable (*fungible*), its kind and quantity only need be designated, and in either case the price must be fixed. From the moment the sale is perfected as above, the thing sold belongs to the buyer and the price to the seller, and each has the right to enforce performance by the other; the risks of loss are governed by the rules stated in Art. 340; if the sale is of real property or rights it is not effective as to third persons until it is duly registered; each party will pay half the costs of the instrument and registry unless otherwise agreed. Purchases upon sight (*á la vista*), or of such things as are usually sampled, weighed or measured, are not complete until after the things are seen, sampled, weighed or measured. If earnest-money has been put up, the buyer loses the amount if he fails through his own fault to complete the contract; if the seller is at fault he must return double the amount of the earnest-money. (Arts. 2811-2827.)

Art. 470. Subject-matter of Contract.— Everything in

commerce and not excepted by law or regulations may be the object of *compra-venta*; but a person cannot sell what does not belong to him or to which he has no lawful right; such sale is void and the seller is liable for damages if he acted with fraud or bad faith; in such case the sale is validated and the seller relieved of any criminal liability, if before eviction or accusation he acquires a lawful title to the thing sold.

The property of minors and those under disability, and property in administration, dowry properties, public property, and property mortgaged or pledged, can only be sold in the cases and form prescribed by law. Rights of inheritance from a living person cannot be sold even with the latter's consent, nor the support (*alimentos*) due by right of family. Things or rights in litigation may be sold, but the seller is liable for damages and to the penalties for fraud if he does not disclose the facts to the buyer and the latter is evicted. The sale of things not in existence or which cannot exist, is void, and the seller is liable for damages if he acted in fraud or bad faith. If the thing sold perishes only in part, the buyer may rescind the contract or accept what is left with a proportional reduction of price in the judgment of experts, unless otherwise agreed. (Arts. 2828-2836.)

Art. 471. Who May Buy and Sell.—All persons not legally forbidden to dispose of their property may sell, and all may buy with the following exceptions: The “moral persons” mentioned in clauses 1 and 2 of Art. 154 cannot buy real estate except for the direct uses of their institution, property acquired in violation of this prohibition being forfeited to the government; husband and wife cannot contract in *compra-venta* between themselves unless they are legally separate as to property, but children may sell to their parents any property they acquire by honest work; property in litigation cannot be bought by those prohibited by Art. 375, except as to the sale of hereditary actions where they are co-heirs, or their own property is affected. Guardians, curators, attorneys in

fact, executors and administrators of deceased and absent persons, receivers and all others in fiduciary relations, and public employés, cannot purchase property entrusted to them for administration or sale, nor can experts or brokers buy property sold through them; purchases made in violation of this chapter, either directly or through another person (*interpósita*,) as his wife or any person of whom the purchaser is presumptive heir or partner in universal partnership, are void; the purchaser is also liable for damages if the property was acquired by fraud. (Arts. 2837–2842, 2845–2849.)

Art. 472. Form of Contract — Registry.— The contract of *compra-venta* does not require any special formality for its validity except where it concerns real estate; if the value of this does not exceed five hundred pesos, the sale may be by private instrument signed by the vendor and purchaser before two known witnesses; if either of the parties cannot write, another person of legal capacity other than the witnesses may sign for him at his request; two originals of said instrument will be made, both duly stamped, one for the purchaser and one for the Public Register.

If the value of the real estate exceeds five hundred pesos the sale must be by *escritura pública*. No sale of real estate is effective as against third persons until duly registered. (Arts. 2920–2925.)

Art. 473. Judicial Sales.— Judicial sales at public auction and for partition are governed by the provisions of the Code of Civil Procedure in respect to their terms and conditions, but in respect to the substance of the contract and the rights and obligations of the purchaser and vendor, are governed by the provisions of this Title as modified by this Article.

Such sales cannot be conducted, directly or through a third (*interpósita*) person, by the judge, secretary or other court employé, nor by the defendant or his attorneys, administrators, guardian, curator, nor by the experts who appraised

the property for sale. As a general rule judicial sales must be made for current money in cash; real estate so sold passes to the purchaser free from all encumbrances, unless otherwise expressly stipulated, and the judge will order the cancellation of the same as provided by the Code of Civil Procedure. (Arts. 2926-2929.)

Art. 474. Derecho del Tanto, or Pre-emption Right.—The owners of an undivided thing cannot sell their interests to strangers if a co-owner wishes to make use of the *derecho del tanto*, or right to purchase in preference to outsiders. For this purpose, the co-owner who wishes to sell, must notify the others through a notary or judicially, of the sale he may have arranged, so that within eight days following they may make use of the *derecho del tanto*, which is lost if not exercised within that time; until such notice is given the sale has no legal effect whatever. If several co-owners wish to purchase, the owner of the largest interest will be preferred; if their interests are equal, one will be designated by lot, unless otherwise agreed. (Arts. 2843-2844.)

CHAPTER 2.

OBLIGATIONS OF THE VENDOR.

- Art. 475. Delivery — Incidents.**
476. Rescission — Effects.
477. Priority of Purchasers.

Art. 475. Delivery — Incidents.—The vendor is bound to deliver the thing sold, and to warrant its quality and his title (*prestar la evicción*). Personal property is delivered by putting it actually into the purchaser's possession or by delivering to him the keys of the place where it is kept; real estate or real rights is delivered by execution of the deed of conveyance, if any, or delivery of the title-deeds of the estate; or, in

either instance, by the purchaser's acknowledgment of receipt. The costs of delivery are on the seller and those of its removal or transportation on the buyer, unless otherwise agreed. The property must be delivered in the condition it was in at the time the contract was made, together with all its "fruits," profits, accessions and rights. The vendor is not bound to deliver unless the price is paid or a time of payment is provided in the contract, nor if during such time the buyer becomes insolvent so as to endanger the payment, unless he gives bond for the price. (Arts. 2850-2857, 2859-2860.)

Art. 476. Rescission — Effects.— A sale on credit is not rescinded by failure to pay when due, but interest may be demanded after default. Where a thing is sold by number, weight or measure stated in the contract, it may be rescinded by the purchaser if a less amount is delivered and the seller fails to make it good, or if an excess is delivered which cannot be reduced without damaging the property; in such case, if the buyer wishes to sustain the contract, he may require a proportionate reduction or pay a proportionate increase of the price, as the case may be; but where the sale is made only upon view and in bulk, although of things which are usually counted, weighed or measured, it is complete when the parties agree on the price, and the buyer cannot rescind it upon discovering that the bulk does not contain the quantity, weight or measure which he calculated; but it may be rescinded if the seller represented the heap to be all of one quality and it is found to contain goods of a different kind and quality from that in sight.

A sale of real estate for a gross price without special valuation of its parts or measurements cannot be rescinded although it contains more or less; if the sale is by metes and bounds the vendor must deliver all embraced therein although in excess of the measure called for in the contract. Upon the rescission of the contract the vendor must return the price if received and pay all costs incurred by the buyer in perform-

ance of his obligation. The action for rescission prescribes within one year from the day of delivery. (Arts. 2858, 2861–2868.)

Art. 477. Priority of Purchasers.—If the same property is sold by the same vendor to different purchasers, the first in time, in case of personalty, or if the time cannot be ascertained, that to the one in possession, will prevail; if real estate, the sale first registered will prevail, and if neither is registered, then the first in time or that to the one in possession, as above; in either case the vendor must restore the price wrongfully received, and is liable to damages, and to prosecution for fraud by the party deceived or defrauded. (Arts. 2869–2872.)

CHAPTER 3.

WARRANTY OF LATENT DEFECTS AND ENCUMBRANCES.

(*Saneamiento.*)

Art. 478. Warranty of Defects — *Caveat Emptor.*

479. Same — Sale of Animals.

480. Rescission — *Lesión.*

481. Warranty of Title and Possession.

482. Obligations of Purchaser — Payment.

483. Same — Interest.

Art. 478. Warranty of Defects — *Caveat Emptor.*—The vendor does not warrant against manifest or visible defects, nor for latent defects where the purchaser is an expert who by reason of his office or profession should easily know them; but the vendor does warrant against hidden defects in the thing sold, which make it unfit for the purpose intended, or so diminish its use that the purchaser would not have bought it, or would have paid less for it, if he had known the facts. In such case the buyer may either rescind the contract, and recover any expenses incurred, together with damages if he

proves that the vendor knew the defects and did not disclose them; or he may recover the difference in value as appraised by experts; after electing one remedy he cannot pursue the other without the vendor's consent. If the property perishes or changes its nature because of such hidden defects, the vendor, if he knew of them, must bear the loss and return the price and expenses of the contract, and pay all damages caused; if he did not know of the defects, he will only repay the price and any expenses. Actions arising under this Article prescribe in six months from delivery of the thing sold, except as specially provided in the last paragraph of Art. 358. (Arts. 2873-2880.)

Art. 479. Same — Sale of Animals.—Where one of several animals or of any other things, sold together, whether for a lump sum or for separate prices for each, is defective, rescission lies only as to the defective one, unless the buyer would not have bought the ones without the other, which is presumed to be so in the case of a team, yoke or pair. Action for rescission must be brought within twenty days after the sale. If an animal dies within three days after its sale, the seller is liable if in the opinion of experts it was sick before the time of sale. (Arts. 2881-2884, 2886.)

Art. 480. Rescission — Lesión.—Upon the rescission of the sale, the thing sold must be returned in the condition in which it was delivered, the buyer being liable for any injury not due to the hidden defects. The question of defects will be decided by experts, one named by each party and a third by the judge in case of disagreement; their decision is final.

The contract of *compra-venta* cannot be rescinded for *lesión* in any case where the thing sold was appraised by experts at the time of the contract of sale; if appraised afterwards, it may be rescinded if in their opinion either party has suffered *lesión* as defined in Art. 382.¹ (Arts. 2885, 2887-2890.)

¹ See Art. 489.

Art. 481. Warranty of Title and Possession.—The vendor is bound to warrant the title and peaceable possession of the property sold, and to answer for “eviction,” in the terms prescribed in Arts. 354–359. (Art. 2891.)

Art. 482. Obligations of Purchaser — Payment.—The purchaser must comply with all terms of his contract, and especially that of payment in the time, place and form agreed; if no time and place are fixed, he must pay upon delivery; in case of dispute as to which party should deliver first, the property and money will both be deposited with a third person. If the sale is on time, and the purchaser is disturbed or seriously threatened in his possession, he may withhold payment, unless otherwise agreed, until the seller assures or gives bond for his possession.

Although it is provided that a sale of real estate on time shall be *ipso facto* rescinded by failure to make payment when due, the purchaser may nevertheless make payment afterwards before the default is judicially declared, after which time the judge cannot grant further time. A sale of personal property is rescinded by the failure of the purchaser, before the expiration of the time of delivery, to come to get it, or to pay for it at the time, unless an extension for payment is granted him. (Arts. 2892–2894, 2898–2900.)

Art. 483. Same — Interest.—The buyer must pay interest between the time of delivery and payment: Where it is so agreed; or where the property delivered produces an income (“*frutos*”), unless the sale was on time without stipulation for interest; or where he is in default as provided in Art. 339. If the extension was granted after the contract, he must pay interest unless otherwise agreed. (Arts. 2895–2897.)

CHAPTER 4.

SALES WITH RIGHT OF RECONVEYANCE. (RETROVENTA.)

Art. 484. Definition — Incidents.

485. Joint Interests — Redemption.

Art. 484. Definition — Incidents.— A sale with condition that it may be rescinded within a certain time, which cannot exceed five years from the date of the contract, and the property be reconveyed and the price returned, is called *retroventa*; it only applies to real estate; the seller must exercise the right within the time stipulated, or if none is fixed, within the five years, or the sale becomes irrevocable; until the reconveyance is effected, the buyer has all the rights of the vendor except such as concern the right of retraction. In case of reconveyance, the seller must reimburse the buyer for the price paid and costs of the contract, and for necessary and useful expenses upon the property; the latter is liable for any damages and injuries caused to the property by his fault or negligence.

The vendor recovers the property sold free of any charges or mortgages placed on it by the purchaser, except leases made by him in good faith, and according to local custom; he may recover it from the possession of a third person, although no mention of the right of *retroventa* is made in the conveyance to him; but the latter may recover damages against his vendor in such case. If at the time of the sale there were any crops or products upon the estate, no account will be taken of those existing at the time of the *retroventa*; if there were none at the time of the sale, but are at the time of the retraction, they will be prorated between the parties, the buyer being entitled to the part corresponding to the time he occupied the estate in the last year before the time of the *retroventa*. (Arts. 2901-2909, 2917-2919.)

Art. 485. Joint Interests — Redemption.— If several jointly and in one contract sell an undivided estate with the right of *retroventa*, or a single vendor dies leaving several heirs, each one can only exercise the right to the extent of his several interest; in such cases the purchaser may require them all to join in redeeming the entire property, and he is not bound to permit partial retraction; but where each of the joint owners sells his interest separately, each may redeem his part and cannot be required to redeem the whole. Where the purchaser of a part of an undivided estate subject to *retroventa*, acquires the entirety at a public or auction sale held against himself, he may require the vendor who wishes to redeem the part to redeem the whole. Where the purchaser dies leaving several heirs, and the property is undivided, the suit for redemption must be brought against all, but if it has been partitioned the action will be against those to whom it was awarded. (Arts. 2910–2916.)

CHAPTER 5.

SALES AND EXCHANGES. (COMPRVENTA Y PERMUTA.)

(*Código Civil*, Arts. 2930–2935; *Código de Comercio*, Arts. 371–388.)

Art. 486. Exchange — Incidents.

487. Sales by Sample.

488. Inspection of Goods.

489. Rescission — *Lesión*.

490. Delivery — Incidents.

Art. 486. Exchange — Incidents. — Exchange (*cambio* or *permuta*) is a contract by which one thing is given for another; where money and property are both given, it is a sale (*venta*) or exchange (*permuta*) according to the terms of Art. 469. If the property given by one party in exchange does not belong to him, the other party is not required

to make delivery on his part, but will return what he has received. If one party is dispossessed, by *evicción*, of the property received in exchange, he may recover what he gave if it is yet in the possession of the other party, or may recover its value and damages; but any rights acquired upon a valuable consideration (*á título oneroso*) by a third person in the property reclaimed by the evicted party will not be prejudiced. All the rules in respect to *compra-venta*, except as regards price, are applicable to exchange, so far as not inconsistent with this Article. (Cod. Civil, Arts. 2930–2935.)

Art. 487. Sales by Sample.—Purchases and sales (*compra-venta*) and exchanges are mercantile where so provided in the Code of Commerce and where they are made with the direct and preferential object of trade; the parties are bound by all the lawful terms they may stipulate. Where made upon sample or call for qualities of goods determined and known in the market, the transaction is completed by the simple consent of the parties; in case of disagreement as to whether the goods delivered correspond with such sample or quality, each party may select one merchant, and these two a third if they cannot agree, to determine the controversy. (Cod. Com. Arts. 371–373, 388.)

Art. 488. Inspection of Goods.—If the goods are not of known and determined quality in the market, and have not been seen by the buyer, the sale is not completed until he examines and accepts them. (Cod. Com. Art. 374.)

Art. 489. Rescission — Lesión.¹—When the contract is completed, the party performing on his part may require the other party to perform or may rescind the contract and recover his losses and damages. Mercantile contracts are not rescindible for *lesión*, but the injured party may recover losses and damages against the party guilty of fraud or deceit in

¹ See Arts. 382, 480.

the contract or its performance, besides the criminal action which he may invoke. Unless otherwise agreed the seller warrants title to the goods. The buyer loses all rights of action against the seller unless within five days after receipt of the goods he presents a written claim for defects of quality or quantity, or within thirty days after receipt presents such written claim for inherent defects. (Cod. Com. Arts. 376, 383-385.)

Art. 490. Delivery — Incidents.— As soon as the buyer accepts the goods and they are at his disposition, he is held to have received them, and the seller holds them as a simple bailee; he is entitled to a lien on them for their price while in his possession. If no time is fixed for the delivery, the seller must hold them at the buyer's disposition during the following twenty-four hours after the contract.

If the goods are to be delivered in stated amounts and times, the buyer is not bound to accept them otherwise; but if he accepts partial deliveries the sale is consummated as to them.

The buyer must pay for the goods according to the terms of sale, and with interest in case of any delay; if no terms are agreed he must pay cash; any amount paid as earnest money will be credited on the price unless otherwise agreed.

The seller bears the expenses of delivery up to the time the goods are weighed and measured and put at the disposition of the buyer; expenses of receipt and removal from the place of delivery are to be borne by the buyer. After the completion of the sale, any loss, damage or deterioration of the goods must be borne by the buyer if they have been actually or constructively delivered to him, if not so delivered, such loss is on the seller; in cases of negligence, fault or fraud, the party guilty of the same is liable for all loss, damage or deterioration caused to the goods, besides the criminal liability incurred.

Any deposits or public sales arising from mercantile *com-*

pra-ventas must be made by judicial authority. (Cod. Com. Arts. 377-382, 386-387.)

TITLE XIV

LEASES. (*Arrendamiento.*)

(*Código Civil*, Arts. 2936-3065.)

CHAPTER 1.

GENERAL PROVISIONS.

- Art. 491. Contract — Incidents.
- 492. Obligations of Lessor.
- 493. Obligations of Lessee — Rent.
- 494. Negligence — Fires.
- 495. Subleases.
- 496. Expiration of Term — Incidents.

Art. 491. Contract — Incidents.— A lease is a contract whereby one party, called the lessor (*arrendador*) grants to another called the lessee (*arrendatario*), the use or enjoyment of a thing for a certain time for a certain price; it may be for such time as the parties agree, unless otherwise provided by law, and the rent may be in money or any determined thing of equal value. The lease must be in writing where the rent exceeds one hundred pesos yearly, except as to country property, which must be in *escritura pública* where the rent exceeds one thousand pesos a year; the form of lease of public property and that of public establishments is fixed by the administrative regulations.

Anyone may make a lease who can contract; but if not the owner of the property, he must be specially empowered by the owner or by law to make the contract, which must be made subject to the terms of the authority granted. A co-

owner of an undivided property cannot lease it without the consent of the others; usufruct and easements may be leased in conformity with the provisions of law on those subjects. Judges and other public officials, and members of public establishments, cannot lease property with which they have any official duties or connection, either directly or through a third person. (Arts. 2936–2949.)

Art. 492. Obligations of Lessor.—Although not expressly stipulated, the lessor is bound: 1, To deliver the leased property to the lessee, at the time agreed or if not agreed upon demand, with all its appurtenances and in a serviceable condition for the uses intended, or to which it is adapted; 2, to maintain the property in the same condition during all the term, making all necessary repairs; 3, not to interfere in any way with the use of the property, or change its form, unless for urgent and indispensable repairs; 4, to warrant its peaceable use or enjoyment during the term, according to Arts. 355–359, except for the mere acts of third parties or abuse of power; 5, to respond for damages suffered by the lessee by reason of latent defects of the property prior to the lease, as in the case of sales under Art. 476. The lessor must pay all taxes on the property unless otherwise agreed, and if the lessee is required by law to pay them, he may deduct the amount from the rent. The lessor is entitled to a lien for the rent and other charges of the lease, upon the personal effects or crops of the lessee on the premises, as provided in Art. 726; if at the expiration of the lease there is any balance in favor of the lessee, the lessor must pay it at once, unless he has some claim against him, in which event he will deposit the amount in court. (Arts. 2950–2959.)

Art. 493. Obligations of Lessee — Rent.—The lessee is bound to pay the rent in the time and manner and at the place agreed, but only from the time he receives the leased property, unless otherwise agreed; if no time for payment is

fixed, it will be payable at the end of each month if urban property, and of each six months if rural property; if no place is fixed, it will be paid as provided in Art. 361; he must pay rent due up to the time the property is delivered back, and in the kind of money agreed, or its equivalent in currency, and upon default in any payment he cannot insist upon the performance of the contract; if the rent was to be paid in produce, and it is not delivered when due, he must pay in money the highest price of the same up to the time of payment; but if by accident, force, eviction or repairs, the use of the property is entirely prevented, he will not pay rent during such time, and if partially prevented, he is entitled to a reduction of the rent, as adjudged by experts, unless otherwise agreed. The lessee of rural property is not entitled to reduction of rents in case of loss of crops or shearing, unless caused directly or indirectly by the lessor, in which case he may demand such reduction or rescind the contract, and recover damages. (Arts. 2960-2974, 2984.)

Art. 494. Negligence — Fires.— The lessee is bound to respond for damages caused to the property by his fault or negligence or that of his household or sublessees, and to use the property only for the purpose agreed or according to its nature. He is liable for loss by fire, unless it was caused by accident, force or defects of construction, or was communicated from a neighboring house in spite of his reasonable vigilance; all of several lessees are jointly liable for such fire unless it is shown to have begun in the apartments of one, who then is alone liable, and one proving that it could not have begun in his apartment is relieved; if the lessor lives in part of the leased premises he is considered a lessee in respect of liability for fire, which liability includes not only the payment of losses and damages suffered by the owner, but those caused directly to others by the fire. The lessee must give prompt notice to the owner of every injurious act done or threatened against the property, and

of the need of repairs, being liable for all damages caused to the owner by his negligence; he is also liable in damages for any alterations he may make in the form of the property without the written consent of the owner, and he must restore it to its former condition. (Arts. 2960, 2975-2983, 2985.)

Art. 495. Subleases.—The lessee cannot sublease the property in whole or in part without the lessor's consent; if he does so, he and the sublessee are severally liable for all damages caused; if he sublets under a general permission given in the lease, he remains liable to the lessor as if he continued in full possession, and the latter retains the lien for rent above given; but if the lessor expressly approves a special subletting, the sublessee is subrogated to all the rights and liabilities of the lessee, unless otherwise agreed; if the sublessee uses the premises for a purpose not agreed, he is liable for all damages caused, and the lessor may rescind the contract. The lessee must pay all taxes assessed against him and his business. (Arts. 2986-2991.)

Art. 496. Expiration of Term — Incidents.—Where the condition of the estate when the lessee took possession is expressly described, he must return it at the end of the term in the same condition, except as depreciated by time and inevitable causes, and where it is not so described, it is presumed to have been in good condition unless proved otherwise. The lessee cannot refuse to surrender the estate at the end of the term, even under pretext of improvements; he cannot recover for useful and voluntary improvements made without the lessor's consent, but may remove them if the premises are not thereby injured.

In the last year of the term of lease of rural property, the lessee must permit his successor, or the owner, as the case may be, to plow up unoccupied lands which he cannot resow for a new crop, and to use buildings and other means necessary for the preparatory work for the next year, but only at and

for such time as is absolutely necessary, according to local customs, unless otherwise provided. The outgoing lessee has the right, on his part, to use the lands and buildings for such time after the end of the term as is absolutely necessary for harvesting and removal of growing crops.

Leases for rural partnerships are governed by the terms of the articles of partnership. Leases to two or more lessees are subject to the rules of mancommunity; to leases made to different persons separately the provisions of Art. 475 as to similar sales apply. (Arts. 2992-3001.)

CHAPTER 2.

TERMINATION OF LEASE.

Art. 497. Expiration of Term — Notice.

498. Rescission of Contract.

Art. 497. Expiration of Term — Notice.— A lease may be terminated: by expiration of the time or accomplishment of the purpose for which it was made; by express agreement, where the rights of third persons are not affected; by nullity, as other contracts; by rescission. If made for a definite term, it expires on the day fixed without need for notice to quit. If the lessee of rural property holds over after the end of the term without objection, the lease is renewed for another year; in the case of urban property, the lease is not renewed, but the lessee must pay rent at the same rate for the time he holds over; in either case sureties for the rent are released unless otherwise agreed. Where the lease is not for a definite term, it is terminated at the will of either party by judicial notification to the other party, of two months in case of urban, and one year in case of rural property. Upon such notice being given, the lessee must post up "to let" signs and show the interior of the house to those who come to see it; the lessee of rural property must allow the preparatory

work stated in the preceding Article. (Arts. 3002-3008, 3032-3033.)

Art. 498. Rescission of Contract.—The general rules of rescission of contracts apply to leases except as herein modified; the lease may also be rescinded for failure to pay rent, for misuse of the property, or for unauthorized subleasing it, as in Art. 495 provided. Where the lease is rescinded for the lessee's fault, he must pay rent until another lease can be made, besides all damages caused to the owner. It cannot be rescinded because the lessor needs the property for his own use, unless so stipulated. If the lessor fails to deliver the property as herein provided, the lessee may rescind the contract and recover damages; and if he fails to make repairs necessary to its use, the lessee may either rescind or compel the lessor to repair, and the judge may allow damages for delay in making the repairs; the lessee may also rescind in case of entire loss of the use, or where the loss is partial if the repairs last more than two months, but unless he rescinds before the repairs are finished, he must continue and pay the same rent. If the property is totally destroyed by accident or force, the lease is rescinded unless otherwise agreed; where the destruction is partial the rent may be reduced or the contract rescinded; it may also be rescinded by the lessee where the use or profits of the property is prevented by the lessor; also if the lessor objects without good cause to a sublease which the lessee has the right to make.

The lease is not rescinded by the death of either party, nor by the transfer of the property by inheritance, sale or gift, unless otherwise provided, except where the transfer is for public uses, in which event both parties must be indemnified according to law by the taker. A lease of property bought subject to *retroventa*, for a longer term than allowed for the exercise of the right, is rescinded by the reconveyance, but the lessee may recover damages against the lessor.

Where a lease is made by a usufructuary, who does not disclose such character, and the usufruct is extinguished by merger, and the owner demands possession, the lessee may recover damages against his lessor; in such cases, and where dispossessed by judicial sale, the lessee must post the property and allow its preparatory use as in Art. 497.

If the property is sold under judicial execution the lease is not rescinded, unless it was made within sixty days before the *sequestro*, in which event the lessee may be ousted at once, the following rules as to payment of rent being observed: The lessee must pay the stipulated rent to the new owner from the date of his conveyance, although he may have already paid the former owner, unless the payment in advance is expressly provided in the lease; where the lessee is required to pay the second time, he may recover the amount from the former owner. Leases in fraud of creditors are governed by the same rules as other contracts for such purpose. (Arts. 3009–3031.)

CHAPTER 3.

LEASE OR HIRING OF PERSONAL PROPERTY.

Art. 499. Contract — Incidents.

500. Hiring of Animals.

Art. 499. Contract — Incidents.— All personal property in commerce, not consumable by use (*fungible*), may be let or hired; the general rules as to leases apply so far as compatible with the nature of the property; the renting of furnished houses, industrial establishments and stocked farms is governed by the general rules, that of the furniture and implements rented separately by this chapter. Personal property hired must be returned at the time agreed or at the end of the use agreed, and if no agreement, the hirer may return it at any time, but the lettor cannot demand it before five days after it was let.

If the property was let by the year, month, week or day, the rent is payable at the end of each of such periods, and if for a fixed term, at the end of that time, unless otherwise agreed. If let for a stated sum and it is returned before the time agreed, the hirer must pay the full price; but if the rental is payable by periods, he only pays what is due up to the time of return, except where the letting was for a fixed time and the periods are only stated as times of payment, in which event he must pay for the whole time. (Arts. 3034-3044, 3065.)

Art. 500. Hiring of Animals.—Where animals in general are hired, the owner must deliver such as are fit for the uses intended, but where a particular one is specified, it must be delivered, and at the place agreed, or if not stated, at the place the contract is made. The lettor is liable to the hirer for damages caused by defects in the animals if he knew of them and failed to advise him. The hiring is for the time agreed, or, if no agreement, for the time necessary for the prudent use for which the animals are required, during which time the owner cannot retake them although he needs them.

The hirer must properly feed and water the animals while in his possession, and treat light illness, and make slight repairs of harness, at his own expense; any disputes about such matters being decided in verbal suit upon the opinion of experts. The hirer cannot use the animals for other purposes than agreed, but if no agreement as to the purpose, he may use them for any service suited to their kind and condition, and at his own expense unless otherwise agreed. Any increase of the animals hired belongs to the owner unless otherwise agreed. The hirer is liable for the loss or injury to the animals unless he proves that it was without his fault, and he is liable even in case of accident if the damage occurred through his improper use of the animal; if the animal dies its remains will be delivered to the owner if of any use and possible to be transported.

Where two or more animals forming a team or yoke are hired, and one becomes useless, the contract is rescinded unless the owner furnishes another to match; where one or more of specified animals becomes useless before delivery without the owner's fault, the contract is rescinded if he promptly notifies the hirer, otherwise the former is liable to pay damages or to replace the animals as the hirer prefers; but if the animals were not specified, he is liable for damages in any event if he fails to deliver the number and kind agreed. The renter of work or breeding animals existing upon country lands, has the same rights and obligations in respect to them as a usufructuary, but gives no bond. (Arts. 3045-3064.)

TITLE XV.

COMPROMISES. (*Transacción.*)

- Art. 501. By Whom and How Made.
 502. What May and May Not be Compromised.
 503. Effects of Compromise — Rescission.

Art. 501. By Whom and How Made.—A compromise (*transacción*) is a contract by which the parties, in consideration of giving, promising or retaining something, settle a present or prevent a future controversy; it is governed by the general rules of contracts except as otherwise provided herein; where it concerns future controversies it must be in writing if the amount involved exceeds two hundred pesos.

Only those who can freely dispose of their property and rights can make a compromise; a special power is required to compromise in the name of another; ascendants and guardians can only compromise for their wards in the forms prescribed by law; husband or wife cannot compromise in regard to dowry property or rights except in the manner and form required to convey or encumber them; public establishments

can only compromise with the consent of the government or of the authority designated by law. (Arts. 3151-3158.)

Art. 502. What May and May Not be Compromised.— Civil actions arising from crimes, and pecuniary rights accruing to a person from the declaration of the civil status, may be compromised; but such compromise cannot affect the public prosecution of crime or establish its proof, nor confer a civil status; civil status of persons and the validity of marriage are not subjects of compromise.

Compromises are void: which concern future crime, fraud or negligence, or civil actions arising from the same; or future rights of inheritance, or an inheritance before the will, if any, is seen; or the right of support, except as to amounts already overdue and after judicial approval; also a compromise made in reliance on documents which are afterwards judicially declared to be forged; or in regard to any matter as to which a final judgment has been rendered of which the parties are ignorant, otherwise if the judgment is not final. (Arts. 3159-3163, 3173, 3176-3177.)

Art. 503. Effects of Compromise — Rescission.— A compromise by one party does not affect the others unless they accept it; it cannot be extended to other similar matters afterwards arising between the same parties, nor to other rights than those expressly mentioned; a general waiver of rights made in a compromise can only be extended to those relating to the matter in dispute. A compromise has the force and effect of a final judgment between the parties, but does not bind a surety unless he consents to it in writing.

A compromise cannot be rescinded for *lesión*; but may be rescinded where it is made by reason of a void title, unless the nullity was the matter in dispute or was expressly considered, in which event the compromise is valid if the rights affected were renunciabile; the discovery of new titles or documents is not ground of rescission in the absence of bad

faith of one party in knowingly concealing them. An error of calculation in a compromise may be corrected without rescission. If one party fails to perform the compromise except through accident or force, the other party may demand its rescission, or may enforce it by executive action, together with any penalties provided for non-performance, unless otherwise stipulated, and in either case may recover damages in accordance with law; but the penalty cannot be enforced in case of rescission where the non-performance was due to the act of the other party, to accident or superior force.

Eviction only lies in case of compromise where one of the parties gave some thing which was not the object of dispute and which the other party loses as a legal result. If the thing given has some defect or encumbrance not known to the other party, he may recover the resulting difference in value as in the case of sales. No suit can be brought to question or set aside a compromise unless security is first given for the return of the thing received. (Arts. 3164–3172, 3174–3175, 3178–3183.)

BOOK V. SUCCESSIONS.

(*Código Civil*, Arts. 3227-3823.)

TITLE I. SUCCESSION BY WILL.

CHAPTER 1.

GENERAL PROVISIONS.

Art. 504. Definitions — General Rules.

505. Inheritance by Will.

506. Construction of Will.

Art. 504. Definitions — General Rules.— Inheritance is the succession to all the property of the deceased and to all his rights and obligations which are not extinguished by his death; that conferred by will is called testamentary and that by operation of law is called legal (*legítima*); it may be partly by will (*testate*), and partly legal (*intestate*), in respect to the estate of the same person.

The heir represents the person of the deceased; if the testator devises part of his estate and is intestate as to the balance, the legal heir is the representative; where the whole estate is devised, the legatees are considered heirs and as such are representatives of the deceased.¹

¹ To avoid the incessant repetition of the terms "heirs" and "legatees," "inheritance" and "legacy," occurring throughout the Spanish text, I have ordinarily used simply "legatee" and "legacy" to embrace both classes, the words "heir" and "inheritance," when used, being

If the author of the inheritance and his heirs or legatees all perish in the same disaster or on the same day without evidence as to which died first, all will be held to have died at the same time, and there will be no transmission of inheritance or legacy between them; proof that one died before another must be made by the party seeking to establish the fact.

The title and legal possession of the property, and the rights and obligations of the deceased, pass upon his death to his heirs as provided in this Book, in the order, form and terms herein established, to his legitimate and illegitimate descendants, whether born or posthumous, to his legitimate and illegitimate ascendants, to the surviving husband or wife, to collateral relations and to the public treasury. (Arts. 3227-3236.)

Art. 505. Inheritance by Will.—A person may dispose of all or part of his property by will to take effect after his death; a will is a personal act and cannot be executed by attorney, nor can the appointing of heirs or legatees or the amounts they should receive, when personally designated, be left to a third person; but the testator may commit to a third person the distribution of amounts left to determined classes, as relatives, the poor, etc., and the selection of the persons or charitable institutions to receive the legacies. Two or more persons cannot join in one will either reciprocally or in favor of third persons. (Arts. 3237-3241, 3246.)

Art. 506. Construction of Will.—A vague disposition in favor of relatives will be construed to mean the nearest in order of legal succession. The statement of a false cause will be disregarded unless it appears from the will itself that the testator would not have made the disposition if he had known its falsity; also the statement of a cause contrary to usually restricted to their technical meaning. The context will always make plain just what is intended.

law, or the designation of a time when the inheritance is to take effect or cease, will be disregarded. The intention of the testator as gathered from the tenor of the will and from other proofs furnished, will be observed. An open will, public or private, lost without the testator's knowledge, or concealed by a third person, may be carried out upon proof of such loss or concealment and of its contents. (Arts. 3242-3245, 3247-3248.)

CHAPTER 2.

CONDITIONS WHICH WILLS MAY CONTAIN.

Art. 507. Valid and Invalid Conditions.

508. Performance of Conditions.

Art. 507. Valid and Invalid Conditions.—The testator is free to attach conditions to the disposal of his property, except such as are physically or legally impossible, but if upon his death they become possible they are valid; failure to perform conditions is excused where all necessary means of performance are employed. Conditions that an act shall not be done or a thing shall not be given, or requiring the legatee to take or not take a certain civil status, are void, but a usufruct, use, habitation, annuity or periodical allowance may be left to a person during the time he remains single or widowed.

Conditions in wills are governed by the rules relating to those in contracts in Arts. 320 to 322, except as herein provided. A bequest upon condition that the legatee provide in his will for the testator or for a third person is void. A condition simply suspending the carrying out of a will for a certain time does not prevent the legatee from acquiring the right to the legacy and its transmission to his heirs. A devise to take effect upon the happening of an event which may not happen is taken to be conditioned upon its happening; but if to take effect on a day certain or upon an event which will

necessarily happen, it is not conditional; the direction to do something is a resolutive condition. (Arts. 3249–3257, 3262, 3265–3266, 3268.)

Art. 508. Performance of Conditions.—A potestative condition to do or give a thing is performed by offering to do or give the required act or thing, if the offer is refused; also where the legatee did or gave the act or thing even before the will was made, unless it is such as may be repeated, in which event the condition is not obligatory unless the testator knew of the previous performance, which fact must be proven by the party charged with payment of the legacy. A casual or mixed condition may be performed at any time before or after the testator's death, unless he otherwise provides; if performed at the time the will is made, without the testator's knowledge, it is taken as performed, but if he knew of it, it is only taken as performance if it cannot exist or be performed again. A condition performed by the existing person on whom it is imposed relates back to the testator's death, and he is entitled to receive the income of the legacy from that time unless otherwise expressly provided.

If no time for performance of the condition or direction is fixed by the will or by the nature of the act, the thing devised will remain in possession of the executor, who upon distribution will take security for its delivery to the legatee when the condition is performed, observing also the rules for distribution in the case of conditional heirs.

Where a legacy consists of periodical payments which must end on a day the arrival of which is uncertain, the legatee is entitled to all payments accruing up to the time such day does arrive; when the legacy must end on a day sure to arrive, it will be delivered to the legatee as the usufructuary of it, and if it consists of periodical payments he is also entitled to all accruing up to such day. Where the legacy is to begin on a day certain to arrive, but just when is or is not known, the person charged with its delivery holds it with

all the rights and obligations of a usufructuary, and if it consists of periodical payments he is entitled to all which accrue in the interim, and performs his obligation by delivering the legacy on the day indicated. (Arts. 3258-3261, 3263-3264, 3267, 3269-3274.)

CHAPTER 3.

CAPACITY TO MAKE A WILL AND TO INHERIT.

Art. 509. Capacity to Make a Will.

510. Capacity to Inherit.

511. Same — Continued.

512. Charitable and Religious Bequests.

513. Effects of Incapacity — Actions.

Art. 509. Capacity to Make a Will.— Only those persons are capable in law of making a will, who have: 1, Perfect knowledge of the act, and, 2, perfect liberty in executing it, that is, are free from all intimidation and moral influence. For want of the first requisite, males under fourteen and females under twelve years of age, and those in a permanent or temporary state of mental alienation, while such impediment lasts, are incapable of making a will. A will made before such mental condition is valid; also one made in a lucid interval, provided the following requirements are observed: Where a demented person wishes to make a will, his guardian, or if none his family, will present a written petition to the judge, who will go to the patient's house accompanied by two physicians, all of whom will examine and question him to satisfy themselves of his mental condition, making a formal record of the result; if this is favorable the will shall be at once drawn up, with all required formalities, and signed also by the judge and physicians, who shall add a written statement that during the whole time the patient preserved perfect lucidity of judgment; without such requisite and state-

ment the will is void. The testator's condition at the time the will is made is the test of his capacity.

For want of the second requisite above mentioned, those are incapable of making a will who execute it under the influence of threats against their life, liberty, honor or property, or that of their husband or wife or relatives in any degree; after the removal of such impediments, and when the testator enjoys complete liberty, he may revalidate his will with the same solemnities required for its execution, otherwise the revalidation is void. (Arts. 3275–3285, 3287.)

Art. 510. Capacity to Inherit.—All inhabitants of the Republic of whatever age or sex are capable of inheriting, by will or intestacy, except: 1, For want of personality; 2, crime; 3, presumption of influence against the liberty of the testator or the truth or integrity of the will; 4, want of international reciprocity; 5, public policy; 6, refusal of or removal from any trust conferred by will.

I. For want of personality those are incapable who were not conceived at the time of the ancestor's death, or were not capable of life in the terms of Art. 203, or were born more than 300 days after such death; but a provision in favor of children born of certain persons living at the testator's death is valid, but not that made in favor of descendants of remoter degree.

II. Incapable of inheriting because of crime are: 1, One convicted of killing, ordering or attempting to kill the person whose estate is concerned, or his parents, children or spouse; 2, one who has accused, although truly, the deceased or his spouse of a crime punishable by death or imprisonment, if the accused is his descendant, ascendant, spouse or brother, unless such accusation were necessary to save the life of the accuser or of his relatives as above mentioned; if the accuser is not so related, the accusation must have been adjudged calumnious; 3, the surviving spouse who has been during the life of the other whose estate is concerned, judicially

declared guilty of adultery or has been divorced for cause; 4, the wife convicted of adultery during her husband's life, where she claims against the estate of a legitimate child born in such marriage; 5, the father and mother of a child abandoned by them; 6, one who has attacked the honor of the deceased or his family, for which he is subject to criminal punishment and convicted; 7, one who used violence towards the deceased to force him to make, refrain from making or revoke his will; 8, the father or mother of natural or spurious children not acknowledged or designated, cannot inherit from them or their descendants; 9, those convicted of incest, cannot inherit from each other; 10, those guilty under the Penal Code of the concealment, substitution or pretending of children, where the inheritance of the latter or of anyone injured or attempted to be injured by such acts is concerned; 11, the accomplice of the adulterous spouse where his or her estate is concerned, if judgment was rendered before the death of the author of the estate. If the party injured by any of the foregoing acts pardons the offender by express declaration or plain acts, he recovers his right to inherit by intestacy, but the right to inherit by will is recovered only where the testator made or revalidated his will after he knew of the offense. (Arts. 3288-3294.)

Art. 511. Same — Continued.—III. By reason of presumption of undue influence over the testator, the guardian and curator of a minor, unless his ascendant or brother, cannot inherit by will, unless made before their appointment or after the minor becomes of age and their accounts are settled; nor can the religious adviser and physician who attended a testator in his last illness inherit unless they are also his legal heirs; the notary who knowingly authorizes a will violating this provision shall be summarily and *ex officio* removed from office by the judge to whom it is presented, and the judge shall be suspended for six months if he fails to impose such penalty, without recourse in either instance except by

“devolutive” appeal. For presumption of undue influence against the truth or integrity of the will, neither the notary nor witnesses can inherit under it.

IV. For want of international reciprocity, foreigners who cannot under the laws of their country leave property to Mexicans, cannot inherit from them either by will or intestacy. Foreigners residing in Mexico may select their own law or the Mexican law in respect to the substance and internal formalities of their wills, but must observe the external form and formalities required by the Code.

V. On account of public policy, “moral persons” prohibited by the Constitution from holding real estate cannot acquire it by inheritance or legacy.

VI. Those appointed in a will as guardians, curators or executors, who refuse without just cause to serve, unless they afterwards qualify and act, and those judicially removed for bad conduct, cannot inherit under the will. (Arts. 3286, 3295–3301, 3309–3310.)

Art. 512. Charitable and Religious Bequests.— A legacy left to a public institution, subject to any encumbrance or condition, is only valid if approved by the Government. The testator may appoint some one to administer invested funds which he leaves to public institutions; if such legacy is in cash, it must be immediately invested, and a detailed report made by the administrator to the Government.

A provision in favor of the poor, without specifying what persons nor of what place, will be applied only to those of the testator’s domicile at the time of his death unless it clearly appears that he intended otherwise; if no one is appointed to make the selection of persons and distribution, it will be made by the executor, or if none, by the judge; if made by the judge, he must apply the funds to hospitals or charitable or educational institutions dependent upon the Government. A legacy of all or part of a testator’s property in favor of his soul, without specifying the pious or charitable work he

wishes done, shall be construed in favor of public charitable institutions. (Arts. 3302-3308.)

Art. 513. Effects of Incapacity — Actions.— Capacity to inherit is-determined as of the time of the death of the testator or intestate, except where the heirship is conditional the heir must be capable also at the time the condition is performed. A testamentary heir dying before the testator, or before the condition is performed, an incapable heir and one renouncing the inheritance, can transmit no right to their heirs; the estate in such cases goes to the legal heirs, unless the testator otherwise provides or the right of accretion is applicable. An incapable heir taking possession must restore the property with all accretions, “fruits” and income which he has received, nor can he have the usufruct or administration of property given in trust for his descendants; the person taking in lieu of the incapable heir is subject to the same charges and conditions as were imposed on the latter. Incapacity to inherit does not deprive the incapable of the right to *alimentos* except in the cases of clauses 1, 2, 3, 6, 7, 8 and 11 of Art. 510; and only is effective upon being judicially decreed upon petition of an interested party, which action to declare incapacity must be brought within five years after the incapable heir entered into possession; if during such time he has conveyed or encumbered any of the property to a *bona fide* third person before the bringing of the suit, the contract will remain in effect, but the incapable heir is liable for all damages caused to the legal heir. Debtors of the estate who cannot become heirs, cannot upon being sued plead incompetency against the heir or legatee in possession. (Arts. 3311-3322.)

CHAPTER 4.

PROPERTY SUBJECT TO DISPOSITION.

Art. 514. Rights of Disposition — Exceptions.

515. Right to Support — Incidents.

Art. 514. Right of Disposition — Exceptions.— Everyone may freely dispose of his property by will except as limited by his obligation to provide support (*alimentos*) for his descendants, surviving husband or wife, and ascendants, as follows: 1, Male descendants under twenty-five years of age; 2, male descendants disabled from working, and unmarried females who lead an honest life, although over twenty-five years old; 3, the surviving husband or wife, provided the widower is disabled from working, or the widow remains a widow and leads an honest life; 4, ascendants: descendants include legitimates and acknowledged or designated illegitimates, and ascendants both legitimate or those who have acknowledged the descendant whose estate is concerned. The obligation to provide support to more remote descendants or ascendants only attaches in the absence or inability of those of nearer degree; and in no case if the person has means of his own, unless its income is not equal to the amount of support to which he would be entitled, in which event only the difference has to be paid. (Arts. 3323–3326, 3329.)

Art. 515. Right to Support — Incidents.— A will which fails to provide support as herein provided is ineffective as against the persons entitled, who may claim their right, leaving the will otherwise in full effect, except that a posthumous child is entitled to receive the entire portion which he would receive as a legal heir if there were no will, unless the testator expressly provides otherwise. The right to receive support cannot be waived nor compromised. To be entitled to

support, the claimant must be within one of the above classes at the time of the testator's death, and the right ceases as soon as he ceases to be in such condition, acquires personal means or is guilty of bad conduct.

The allowance for support will be fixed and secured as provided in Art. 178, the other provisions of which chapter however do not apply to hereditary support; it can never exceed, nor be less than one-half of, the products of the portion which the party entitled would receive in case of intestacy; the amount may be fixed by the testator if within the above minimum. If the estate is not sufficient to provide support for all the persons entitled, the descendants and surviving spouse will first be provided for pro rata, and only where they are fully satisfied will the ascendants of any degree be provided for pro rata. The allowance for support is a charge upon the estate, except when the testator has imposed it upon one or more legatees. (Arts. 3327-3328, 3330-3334.)

CHAPTER 5.

DESIGNATION OF HEIRS. (INSTITUCIÓN DE HEREDERO.)

Art. 516. Heirs — Rules of Inheritance.

Art. 516. Heirs — Rules of Inheritance.— A will legally executed is valid although it designates no heirs, or those named refuse to accept or are incapable of inheriting; in such cases the other lawful provisions will be given effect.

Heirs may be given either a certain article or amount or an aliquot part of the estate; if the portion each is to receive is not specified, they will take equal parts. Although some heirs or legatees are named individually and others collectively, as "Peter and Paul and the sons of Francisco," the latter will be considered as named individually, unless the intention of the testator clearly appears otherwise. Where the testator designates his brothers, and he has them of the

full and of the half blood, the inheritance or legacy will be divided as in case of intestacy. If he names a certain person and his children, they will be construed to take simultaneously and not successively.

The heirs should be designated by name and surname, or otherwise distinctly identified, an error of name is immaterial if the heir or legatee is otherwise identified; if it cannot be known certainly who is intended, of several with the same name and description, neither will inherit. Pious and charitable bequests are governed by the special rules stated in Arts. 505 and 512. The heir is not liable for debts, legacies or other charges of the estate beyond the amount which he receives. (Arts. 3335-3347, 3358, 3426.)

CHAPTER 6.

LEGACIES. (LEGADOS.)

Art. 517. Rules and Incidents.

518. Validity and Effect of Legacies.

519. Same — Same.

520. Legacies Subject to Encumbrance.

521. Legacies of Debts.

522. Some Particular Legacies.

523. Alternative Bequests — Election.

524. Acceptance or Refusal of Legacies.

525. Payment of Legacies — Incidents.

Art. 517. Rules and Incidents.— Those who cannot inherit cannot take by legacy; the same rules of capacity apply, as stated in the provisions of Arts. 510 to 513. A legacy may consist of the gift of a thing, or that of an act or service. A creditor whose only evidence of debt is the will is considered as a preferred legatee. The testator may impose on heirs and legatees the payment of legacies, but they are only liable for it or for debts to the extent of the property received, and if they refuse the legacy, the charge will be paid only to the extent of its value; if they do not receive the full amount of

the legacy, the charge will be reduced proportionally; if evicted they may recover what they have paid. If the charge consists of doing something, the heir or legatee accepting must perform it. (Art. 3348-3357.)

Art. 518. Validity and Effect of Legacies.—A legacy of specific property of the testator which he does not own at his death is void, but if he owns any part of it the legatee will take such part; the legacy of a thing not in commerce, or which through the testator's act has lost its form and identity, or which is entirely destroyed in the testator's lifetime, or after his death without the heir's fault, or is lost by eviction, or was disposed of by the testator, unless afterwards recovered, is likewise void. A legacy of a thing or amount deposited in a certain place is only good as to whatever is found there. The legacy of an indefinite chattel of a definite kind is valid although nothing of that kind is found in the estate; in such event the legacy is satisfied by delivering a like chattel of average quality either on hand or bought for the purpose, or by paying the legatee the value of a like average article either as agreed on or determined by experts; if the testator expressly left the choice to the legatee, he may choose the best of several on hand, if there are any, otherwise he can only require one of average quality or its value; if the indefinite bequest is of real estate, the legacy is only valid if there are several parcels of the same kind in the estate, in which event the above rules as to selection apply. Where the testator, the heir or the legatee have only a certain part or right in the thing bequeathed, the bequest will be limited to such part, unless the testator expressly declared his knowledge of such fact but nevertheless bequeathed the whole of it. (Arts. 3359-3369, 3375.)

Art. 519. Same — Same.—A legacy of a thing belonging to the legatee himself when the will was made is void, but if he acquired the thing afterwards, he is entitled to receive

its value; if the testator knew that he only owned part of the thing bequeathed, it is good to that extent. A legacy to a third person of property belonging to the heir or legatee, (where the testator knew that fact,) is valid, and the latter, if he accepts the succession, must deliver the thing bequeathed or its value; if the testator did not know the fact, such legacy is void; likewise if the testator knowingly bequeathes property of another, it must be acquired and delivered, or its value paid, to the legatee, but such legacy is void if the testator did not know the fact; the legatee must prove the fact of knowledge; the legacy is valid where the testator acquires the property after making the will. (Arts. 3390–3398.)

Art. 520. Legacies Subject to Encumbrance.—The legacy of property held in pledge or antichresis, or of mortgage-deeds, or of a surety-bond, either to the surety or principal debtor, extinguishes the special right so created, but not the debt, unless expressly so provided. Bequests of usufruct, use, habitation or easement are for the life of the legatee unless otherwise limited, except where left to a corporation capable of taking they shall only continue thirty years. Where the property bequeathed is pledged or mortgaged it must be redeemed at the cost of the inheritance, unless otherwise provided by the testator; likewise, unless otherwise provided, if the property bequeathed is subject to usufruct, use or habitation, the legatee must permit the user until legally extinguished, the heir being under no obligation; and if the property is burdened by easement, annuity or other encumbrance, the legatee takes subject to it, and if any income or annuity is overdue, it must be paid at the cost of the inheritance. (Arts. 3370–3374, 3376–3378.)

Art. 521. Legacies of Debts.—The legacy of a debt made to the debtor himself extinguishes the debt, and the person charged with its performance must give him a receipt in

full, and must redeem any pledges, cancel any mortgages and surety bonds and relieve the legatee from all liability; the legacy to a third person of a debt due the testator is only good as to any amount unpaid at the testator's death, and the person charged must deliver to the legatee the evidence of debt and assign him all actions for its enforcement, being thereby discharged from all liabilities on account of it; the foregoing legacies include all interest due at the testator's death; such legacies are good although the debt is in suit, if not paid. The legacy of the evidences of debt, public or private, carries the debt, except as provided in the first part of the preceding Article. A general legacy of forgiveness of debts applies only to those existing at the time the will was made. A legacy to a creditor does not off-set his debt unless the testator so declares; if applied as set-off the creditor may recover any difference of amount. The testator may favor his creditor by waiving conditions or time or by securing the debt, but cannot thereby prejudice other creditors. (Arts. 3379-3389.)

Art. 522. Some Particular Legacies.—A bequest of education lasts until the legatee becomes of age, unless he sooner begins to support himself or gets married; a bequest of support continues during the life of the legatee unless otherwise provided by the testator; if he did not fix the amount it will be as provided in Art. 178; but if he was accustomed to give the legatee a certain sum for support, it will be in the same amount. The bequest of an annuity of any kind or amount runs from the testator's death, is payable at the beginning of each period, and the legatee is entitled to an installment due although he dies before the end of the period already begun. The legacy of a thing with everything which it comprises, does not include the documents relating to title (*justificantes*) nor active credits, unless specially mentioned. A legacy of the furnishings of a house does not include money, animals, books, statuary, paintings or effects

(*alhajas*) of personal use, unless expressly designated. Where a property is bequeathed, and the testator afterward adds new acquisitions to it, the latter are not included in the legacy unless he so provided by a codicil, but this does not apply as to improvements made upon such estate. (Arts. 3399–3408.)

Art. 523. Alternative Bequests — Election.— In alternative legacies the heir has the election unless expressly conceded to the legatee; if the latter has the choice, he may select the thing of most value, the heir having the election may deliver that of least value; the provisions of Arts. 327–329 in regard to alternative contracts also apply; if the person having the election is unable to make it, his legal representative or heirs may do so; if they fail to select within a time to be fixed by the judge, the latter will make the election at the instance of an interested party; the election once legally made is irrevocable. (Arts. 3409–3414.)

Art. 524. Acceptance or Refusal of Legacies.— A legatee cannot accept a part of the legacy and refuse the balance; if he is both heir and legatee, he may refuse the inheritance and accept the legacy or *vice versa*. If he is left two legacies one of which is onerous, the legatee cannot refuse the latter and accept the free one; if both are either free or burdened, he may accept either or both. If the legatee dies before acceptance leaving several heirs, some of these may accept and some refuse the part to which each is entitled respectively. (Arts. 3415–3418.)

Art. 525. Payment of Legacies — Incidents.— The legatee acquires the right to the legacy, whether present or deferred, from the moment of the testator's death and transmits it to his heirs; and where it is a specific thing, it is at his risk from that moment as provided in Art. 340, and he is entitled to all its present and future products; he may require the heir

to give security or a mortgage in all cases where a creditor might require it,² except where one heir is charged with its payment the mortgage can be required only on his portion; where there are only legatees they may require such security among themselves. A legacy of money payable upon assuming a civil status (*cuando se tome estado*) refers to that of marriage.

The legatee cannot take possession of the legacy except upon its delivery by the executor; if already in his possession he may retain it subject to returning it for any reduction; it must be delivered to him with all accessories in the condition it was in at the testator's death; if a specific bequest is lost the general rules stated in Arts. 339 to 353 will be observed. A legacy of money must be paid in cash, and if not on hand, other property must be sold to produce it. The necessary expenses of delivering a legacy and any taxes due on it, must be borne by the legatee unless otherwise provided.

The legatees may recover specific real or personal legacies from any third person; if a real legacy is destroyed by fire after the testator's death, and is insured, the legatee is entitled to the insurance.

If the entire estate is distributed, all debts and encumbrances will be paid by reducing each legacy pro rata, unless otherwise provided; if the estate is not sufficient to pay all legacies, they will be paid as follows: 1, Remuneratory legacies; 2, those which the testator designates as preferred; 3, specific legacies; 4, those for support or education; 5, all others pro rata.

If the will is declared void after payment of legacies, the true heir may recover the legacy from the legatee but not from other heirs unless they were guilty of fraud in the distribution. (Arts. 3419-3425, 3427-3438.)

² See Art. 413.

CHAPTER 7.

SUBSTITUTION OF HEIRS.

Art. 526. Definitions — Rules.

527. Trusts and Trustees.

Art. 526. Definitions — Rules.— The testator may name other persons either jointly or successively, as substitutes to take in case those first named die before the testator, or cannot or do not accept the inheritance; this is called “vulgar” substitution, and is understood where not otherwise expressed; the substitute of the substitute, in default of the latter, is the substitute of the substituted heir.

The father or ascendant exercising the *patria potestad* may appoint “pupillary” substitutes for male children under fourteen and females under twelve for the event of their death before reaching those ages; the ascendant may appoint an “exemplary” substitute for a descendant of legal age who has been legally declared mentally incapable, the substitution being revoked upon the judicial declaration that the heir has recovered his reason; all other forms of substitution, including trustees, are prohibited, but the appointment of a trustee is simply void and does not affect the heir nor the legacy. The substitutes take subject to the same charges and conditions as the original heirs would have taken, unless the testator otherwise provides or the encumbrance or condition was personal to the heir; if the heirs were to receive unequal portions and are reciprocally substituted, they will receive the same shares in the substitution unless the testator clearly otherwise provides. (Arts. 3439 - 3449.)

Art. 527. Trusts and Trustees.— A provision by which the testator leaves the fee to one and the usufruct to another person, is not considered fiduciary or in trust, unless one or

the other is bound to transfer the fee or usufruct at his death to a third person; but a father may leave property to his son with the obligation to convey it to his own children, in which event the former holds as usufructuary, but such provision is void if made in favor of more remote descendants.

Provisions forbidding alienation, or which give the remainder of the property to a third person upon the death of the heir, or enjoin the payment of a certain income or annuity to several persons successively, are considered trusts and are prohibited; but this does not include obligations imposed on the heirs to pay certain amounts to charitable purposes; but such obligation must be made a charge upon specified property, though the heirs may capitalize and invest it at interest with the concurrence of the chief political authority of the place, the *Ministerio Público* and the interested parties; the heirs charged are only bound to comply with the trust, their personal succession being governed by the Code.

The testator may establish a fund in a public charitable or educational institution for his descendants or for his collateral relatives within the eighth degree, the principal of which shall go to public charities upon the failure of the original beneficiaries. All the provisions of this chapter apply to legatees as well as heirs. (Arts. 3450-3461.)

CHAPTER 8.

NULLITY AND REVOCATION OF WILLS.

Art. 528. Secret Heirs and Legacies.

529. Duress or Fraud.

530. Void Wills and Provisions.

531. Revocation — Effects.

Art. 528. Secret Heirs and Legacies.— The appointment of heirs by secret memoranda or instructions is void; legacies may be left by such means, but the heir or person charged to give them effect must report them confidentially and before

the inventory is approved, to the testamentary judge and to the Ministerio Público, who if such instructions are against the law, will prohibit their being given effect, otherwise they will see that they are carried out, and may require proof of compliance with them; the heir or person charged who fails to make such report or proof, must pay a fine equal to twenty-five per cent. of the amount of such secret legacies. (Arts. 3462-3465.)

Art. 529. Duress or Fraud.—A will executed by violence or procured through fraud is void; whoever by such means prevents one from making his last will is punishable criminally and loses his right to inherit by intestacy. If the judge has notice that any one is being prevented from making his will, he will immediately go to the latter's house to protect him in his right, and must make a record of all the facts and of whether the will was made. (Arts. 3466-3468.)

Art. 530. Void Wills and Provisions.—A will is void in which the testator only expresses his will by signs or monosyllables in answer to questions asked him; also one which violates the requirements of chapter 9, *infra*; a provision forbidding contest of an illegal will is void. A will is revocable up to the last moment of the testator's life and the right cannot be waived; a waiver of the right to make a will or agreement to make it only under certain conditions is void. (Arts. 3469-3473, 3475.)

Art. 531. Revocation — Effects.—A former will is *ipso facto* revoked by a later one, unless in it the testator expressly declares that the former shall subsist wholly or in part; such revocation is effective although the latter will fails to become effective; but the former will recovers its effects if the testator in revoking the later one expressly declares that the first shall subsist; the revocation of an open public will does not affect

the acknowledgment of an illegitimate child made in such will.

Testamentary provisions fail and remain without effect as to heirs and legatees, if the latter die before the testator or before the performance of the conditions of the legacy, or if they become incapable to take it or waive their rights; but they do not fail where conditioned upon unknown past or present events, although notice of the fact is acquired after the death of the heir or legatee, and his rights pass to his heirs. (Arts. 3474, 3476-3480.)

CHAPTER 9.

THE FORM OF WILLS.

Art. 532. Kinds of Wills — Definitions.

533. Paper — Stamps.

534. Witnesses — Identification.

535. Notice of Death.

536. Open Public Wills.

537. Closed Public Wills.

538. Opening of Will.

539. Private Wills.

540. Military Wills.

541. Maritime Wills.

542. Foreign Wills.

Art. 532. Kinds of Wills — Definitions.— In respect of form a will is public or private; a public will is one executed before a notary and competent witnesses, upon properly stamped paper; a private will is one executed before competent witnesses without a notary and on paper whether stamped or not. A public will may be open or closed, a private will, except of soldiers,³ can only be open. The will is open where the testator declares his last will before the persons who must join in it; it is closed where the testator states

³ See Art. 540.

that his will is contained in the folded paper which he presents to such persons. (Arts. 3481–3486.)

Art. 533. Paper — Stamps.— The paper on which wills, except those of soldiers and sailors are written, must be stamped in accordance with the Stamp Law. No blank sheets must be left in wills, nor abbreviations or figures used, under penalty of five hundred pesos against the notary and half that amount against others assisting in it. (Arts. 3487–3488, 3495.)

Art. 534. Witnesses — Identification.— The following cannot be witnesses to a will: Clerks of the notary before whom it is executed; persons who are blind, or totally deaf or dumb or not of sound mind, or who do not understand the testator's language, or who are not domiciled in the place, except as provided by law; women, minors and persons convicted for forgery; such disability must exist at the time the will is made. Where the witness does not know the language of the country, two interpreters named by the testator must take part and sign besides the notary and witnesses.

The notary and witnesses must know the testator or satisfy themselves in some way of his identity and that he is of perfectly sound mind and free from all coercion; if the identity of the testator cannot be verified, that fact shall be stated together with all marks of identification which are apparent on his person; in such case the will is not valid until the identity of the testator is proven. (Arts. 3489–3494.)

Art. 535. Notice of Death.— The notary before whom an open will was executed or a closed one delivered, or any person having the closed will in his possession, must notify the parties interested as soon as he knows of the death of the testator, or if they are absent or unknown he must notify the judge, and if he fails or delays to give such notice he is liable for all damages and losses resulting; and any person failing

to present the will or who fraudulently abstracts it from the testator's effects, shall lose all rights of inheritance by intestacy and be subject to criminal punishment. (Arts. 3496-3498, 3534.)

Art. 536. Open Public Wills.— The open public will must be dictated clearly and positively by the testator in the presence of three witnesses and the notary; the latter must reduce the clauses to writing and read them aloud to know whether the testator approves them; if he does all will sign the instrument, stating the place, hour, day, month and year of its execution. If any witness cannot write, one of the others will sign for him, but at least two witnesses must sign in person; if the testator cannot write, another witness must be called in and sign at his request; where in extreme cases such other witness can not be had, one of the others will sign for the testator, the fact being recorded. If the testator is entirely deaf but can read, he will read his will, or if he cannot do so he may have some one else read it in his name.

All these formalities must be observed without interruption and the notary must so certify; if any are omitted the will is void and the notary is liable for all damages and will lose his office. (Arts. 3499-3505.)

Art. 537. Closed Public Wills.— A closed will may be written on unstamped paper by the testator or by someone else at his request, and each sheet must be "rubricated," and the last one signed by the testator, or by another at his request if he cannot; such other person must be present at its presentation, when the testator shall declare that it was signed at his request, and such person must sign the wrapper with the witnesses and notary. The will or wrapper enclosing it must be closed and sealed and presented to the notary before three witnesses, the testator declaring at the time that it contains his last will; the notary must certify on the wrapper, which must be stamped as required by law, that all

the foregoing formalities have been observed, and it must be signed by the testator, witnesses and notary and the latter's seal affixed; the provisions of the preceding Article in regard to inability of testator or witnesses to sign will be observed, except that at least three witnesses must always sign; only in extreme cases can one of the witnesses sign for another or for the testator, when unable to do so himself; the notary must certify such circumstances under penalty of three years' suspension.

One who cannot read cannot make a closed will; a deaf-mute may do so provided it is entirely written by himself, and that on presenting it to the notary before five witnesses he write on the wrapper in presence of them all that it contains his last will written and signed by himself, which fact shall be certified by the notary, together with the other facts and observing the formalities above required, if the testator cannot sign the wrapper, another person, or a witness, may sign for him, as in the foregoing paragraph provided; one who is only deaf or dumb may make a closed will if he writes it himself, or if written by another, the testator must sign a statement of that fact, and all other formalities must be observed.

A closed will wanting in any of the foregoing formalities is void and the notary will be liable for all damages and lose his office; upon the will being duly executed it will be delivered to the testator and the notary will enter on his record the place and time of its execution and delivery, the will not being affected by omission to make such entry, but the notary will be suspended for six months. The testator may keep the will or entrust it to another or deposit it in the judicial archives; in the latter case it will be presented to the person in charge, who will make an entry of the fact in a book kept for the purpose, which will be signed by him and the testator or his attorney, to whom a certified copy will be given; the will may be withdrawn at any time with the same formalities; if presented or withdrawn by attorney his power must be by

escritura pública, which fact will be noted, and the power filed. (Arts. 3506-3526.)

Art. 538. Opening of Will.—Upon receiving a closed will the judge must immediately cause the notary and witnesses to appear before him; it cannot be opened until they or such as appear, acknowledge their signatures and that of the testator or person signing for him, before the judge, and declare their belief that it is closed and sealed as at the time of delivery. If all the witnesses cannot appear, the acknowledgment of a majority and of the notary is sufficient; if the notary, the majority or none of the witnesses can appear, the judge will take proof of such fact and of the signatures, and that all were present at the time and place the will was executed; thereupon the judge will decree the publication and protocolization of the will.

A closed will is void if the inner sheet or outer wrapper is found broken or any of the signatures blotted, scratched or altered, although the contents are not affected. (Arts. 3527-3533.)

Art. 539. Private Wills.—A private will is permitted: 1, When the testator is attacked with a violent sickness imminently threatening his life; 2, where made in a place isolated by epidemic although he is not attacked by it; 3, where the place is besieged; 4, where there is no notary or judge who can act as notary; such will is not valid unless the testator dies from such sickness or within a month afterwards. The testator in such cases must declare his last will before five, or in extreme urgency, three competent witnesses, one of whom will reduce it to writing, unless none of the witnesses can write, when it need not be written; the provisions of Art. 536 in regard to public wills must be observed; the will must also be transferred to *escritura pública* by order of the judge upon the depositions of the attesting witnesses, and at the petition of the interested parties immediately that they

learn of the testator's death and the nature of his dispositions. The witnesses must declare precisely: The place and time that the will was made; whether they distinctly recognized, saw and heard the testator, and whether he was in full possession of his faculties and free from all coercion; the tenor of his dispositions; the reason why there was no notary; and whether the testator died of the sickness or danger. If the witnesses are competent and are agreed upon all the above circumstances, the judge will declare their statements the formal will of the deceased, will order it protocolized, and that certified copies be issued to those entitled. If any of the witnesses should die after the testator and before the proof of the will, or be absent without fault of any party, it may be proven by at least three of the others who are competent and unanimous in their statements; if the whereabouts of the absent witnesses is known, they shall be examined by letters rogatory (*exhorto*). (Arts. 3535–3547.)

Art. 540. Military Wills.—Soldiers and civil employés of the army, upon beginning a campaign, may make private wills with the formalities prescribed in the preceding Article; if it is made at the time of entering an engagement or when wounded on the field or taken prisoner, he may declare his will before only two competent witnesses or deliver to them a paper containing it written or at least signed by himself; if the will is closed, the witness, and the testator, if possible, will sign on the wrapper. Where made in writing the will must be delivered by whoever has charge of it, immediately upon the testator's death, to his immediate chief, who will send it to the Ministry of War, and this to the proper judicial authority, that it may be given effect. If the will was delivered orally, the witnesses must at once advise the chief, who will immediately notify the Department and the latter the judge, who will summon the witnesses and proceed in due form as provided in the preceding Article. The will is void if the testator survives. (Arts. 3548–3554.)

Art. 541. Maritime Wills.—Persons on board of Mexican war or merchant ships at sea may make private wills, which must be in writing before two witnesses and the ship's commander, or if the latter's will, before his next in command, and must otherwise follow the formalities of public wills; it must be made in duplicate and kept among the ships most important papers and a note of it made on the log-book. If the ship arrives at a port where there is a Mexican consul or vice consul, the commander will deliver to him one copy dated and sealed, with a copy of the entry from the log-book; upon arriving in Mexican territory; the other copy, or both if one was not left elsewhere, will be delivered in like manner to the port authorities; in all cases the captain will take a receipt and make a note of it in the log-book. The consuls or port authorities will immediately make a record of its receipt and at the earliest opportunity forward it and the copies to the Ministry of Foreign Relations, which will cause notice of the testator's death to be published in the newspapers so that interested parties may take steps to have the will opened. Such will is only valid if the testator dies at sea or within one month after landing at some place where according to the Mexican or foreign law he could ratify or remake his last will; if he disembarks at a place where there is no consular agent, and the fact or date of his death is unknown, the procedure in case of absentees will be followed. (Arts. 3555–3564.)

Art. 542. Foreign Wills.—Wills made in foreign countries in authentic conformity with the laws of such country will be given effect in Mexico. The Mexican secretaries of legation, consuls and vice consuls may act as notaries, using their official seals, in the execution of the wills of Mexicans in accordance with the Code; such officials will forward certified copies of open or of the record of closed wills executed before them to the Ministry of Relations for the purposes stated in the preceding Article, and if left in their custody

will give their receipt for same and state that fact. (Arts. 3565–3570.)

TITLE II.

INTESTATE SUCCESSION.

CHAPTER 1.

GENERAL PROVISIONS.

Art. 543. When Necessary.

544. Order of Inheritance.

545. The Right of Representation.

546. Succession of Descendants.

547. Succession of Ascendants.

548. Collateral Succession.

549. Surviving Husband or Wife.

550. Succession of the Public Treasury.

Art. 543. When Necessary.— Intestate succession, without regard to the origin and nature of the deceased's property, is necessary: Where there is no will or the will made is void or becomes ineffective; as to the remaining assets where the testator did not dispose of all his property; where the heir dies before the testator, or is incapable of inheriting, or fails to perform conditions imposed or refuses the inheritance and no substitute is appointed; in such cases where the will is valid, only the lapsed interests are subject to intestacy. (Arts. 3571–3574.)

Art. 544. Order of Inheritance.— Intestate succession is granted: 1, To descendants and ascendants and the surviving spouse; 2, if there are no descendants or ascendants, to brothers and sisters or if deceased to their children, and to the surviving spouse; 3, if no brothers or sisters or their children, to the surviving spouse; 4, if none of the foregoing, to all other collaterals within the eighth degree; 5, failing all such

relations, to the public treasury as provided in Art. 550. Relationship by affinity gives no right of inheritance; nearer relatives exclude more remote except in case of representation; relations in the same grade inherit per capita or in equal shares; if some do not or cannot take, his share accretes to the others of the same degree except in case of representation; if all of one degree are excluded those of the next succeed in their own right and not as representatives; descendants of an incompetent are not excluded even during his life if they are his legal representatives. (Arts. 3575-3582.)

Art. 545. The Right of Representation.—Representation is the right of relatives of a person to succeed to the rights he would have if he were alive or could inherit; such right only follows the direct line of descent and never of ascent; in collateral line it only applies in favor of children of brothers or sisters of the whole or half blood where they take (*concurran*) with surviving brothers or sisters of the deceased; other collaterals inherit per capita; several representatives of the same person share equally in his portion. An heir who has repudiated the inheritance may be represented, but not one whose proper representative has been declared incapable; an heir may repudiate an inheritance by one line and accept that coming by another; representation cannot take place between living persons except as mentioned in the preceding Article. (Arts. 3583-3590.)

Art. 546. Succession of Descendants.—If upon the death of the parents there only remain legitimate or legitimated children, the estate or the intestate part of it will be divided among them equally regardless of age or sex and whether of the whole or half blood; if there are only natural or only spurious children legally acknowledged or designated, they will inherit in the same way as legitimates; if there only remain descendants of the more remote degree they will inherit per stirpes, and if in any stirpes there are several heirs they

will take equal portions; if there remain children and descendants the former take per capita and the latter per stirpes. Only legitimate or legitimated descendants of natural or spurious children have the right of representation.

Where there are both legitimate or legitimated and acknowledged natural children, one-third of what the latter would receive in an equal division will be deducted from their share and added to that of the former. Where there are legitimate and spurious descendants, the latter are only entitled to support not to exceed that of naturals. Where there are natural and spurious descendants, one-half of the latter's share shall be deducted and added to that of the former. Where there are legitimate, natural and spurious descendants, the division will be made between the two former as above provided and the latter shall only receive support as stated above. Where there are legitimate children and ascendants the latter are only entitled to a child's portion of *alimentos*. Where there are natural children and ascendants in the first degree the division will be by equal parts considering all such ascendants as one person; if the ascendants are of remoter degree they are only entitled to a child's portion of *alimentos*. Where there are ascendants of the first degree and spurious children, one-half will be deducted from the latter's share and added to that of the former considered together as one person; if the ascendants are of remoter degree, the division will be equal taking all the latter as one person; if the children are legitimate and natural, the division between them will be as provided for such case and the ascendants will receive only a child's portion of *alimentos*. Where there are first degree ascendants and natural and spurious children, one-half of the portion of the spurious children will be added to that divisible between the ascendants and naturals; if the ascendants are of remoter degree, the half will be added to the portion of the naturals, and the ascendants will only receive a child's portion of *alimentos*. (Arts. 3591-3609.)

Art. 547. Succession of Ascendants.— If there are no descendants the parents will inherit equally or the surviving one the entire estate; if there are only remoter ascendants in one line all take equally; if in both lines, the estate will be divided in half and one part go to each line and be equally divided among all its members; if there is a surviving husband or wife of the deceased, he or she will take one-half the estate, the other half being distributed as above. Illegitimate ascendants who have acknowledged the deceased descendant before he acquired the inheritance have the same rights with others, if afterwards, they are only entitled to alimentos according to law. (Arts. 3610–3617.)

Art. 548. Collateral Succession.— Collaterals within the eighth degree may inherit where there are neither ascendants, descendants nor surviving husband or wife. If there are only legitimate whole brothers they take equally; if some are of half blood the former take a double portion; if there are brothers and nephews, children of deceased brothers, the first take per capita, the latter per stirpes; if there are no legitimate brothers, their legitimate children succeed, the estate being divided per stirpes and the portion of each stirpe per capita; if neither legitimate brothers nor their legitimate children, then first natural, then spurious brothers legally acknowledged, or in their default their legitimate children, and in the same order of stirpes and capita; the children of half brothers have the right of representation and take the part to which they are entitled whether singly or with their uncles. If there are none of the foregoing heirs, the relatives nearest in degree will inherit indiscriminately and in equal shares. (Arts. 3618–3626.)

Art. 549. Surviving Husband or Wife.— Where there are other descendants, the surviving spouse is entitled to the share of a legitimate child, if such survivor has no property of his own or it is not equal to a child's share, and shall receive such

portion or sufficient to make up a like amount. If there be the survivor and one brother, they will share equally, if two or more brothers, the spouse will take one-third, and the brothers the balance; if there are no brothers or their representatives, the survivor takes the entire estate; and is entitled to the above shares although possessed of property of his own; the brothers referred to are legitimates; if there are only illegitimates they are only entitled to *alimentos*. (Arts. 3627–3633.)

Art. 550. Succession of the Public Treasury.— Where there are no heirs as provided in the foregoing Articles, the Treasury and public charities will inherit in equal shares on the same conditions as ordinary heirs, saving the rights of creditors, donees and *enfiteutas*. If any of such estate is real property, unless intended for public use, it must be sold according to law before adjudication by the judge having jurisdiction of the estate and the proceeds paid into the treasury and to public charity. (Arts. 3634–3636.)

CHAPTER 2.

PROVISIONS COMMON TO TESTAMENTARY AND INTESTATE SUCCESSION.

- Art. 551. Pregnancy of Widow.
- 552. The Right of Accretion.
- 553. Effects of Succession.
- 554. Acceptance and Refusal of Inheritance.

Art. 551. Pregnancy of Widow.— If the widow is probably pregnant when her husband dies, she must advise the judge within forty days so that he may notify the interested parties, who may request an investigation of the fact, and that proper steps be taken to prevent the feigning of birth or living issue; if the investigation is against pregnancy and the widow insists upon it, she may request the judge, after a hearing before

the interested parties, to designate a proper place where she may be kept under observation with necessary precautions until the natural time for birth, and the interested parties may at any time request a further investigation; if the husband acknowledged the pregnancy in public or private instrument, the investigation cannot be had, but she may be kept under observation as above.

The pregnant widow must be properly provided for although she has personal means, but where she did not notify the judge or observe the precautionary measures taken she may be deprived of support if she has means; if upon subsequent investigation the pregnancy is ascertained the provisions must be given her; she is not to return provisions received although it results, unless denied by expert report, that she was not pregnant or has a miscarriage; all questions of alimentos will be decided summarily by the judge, favoring the widow in case of doubt, the widow having the right to be heard on all matters herein provided. The defaults of the mother do not prejudice the legitimacy of the child if it can be otherwise established. The distribution of the estate will be suspended until the birth, but creditors may be paid by order of court. If the widow is in exercise of the *patria potestad*, she will continue to administer the minor's property; if she have no children or they are of age, the executor will administer the property except as provided in regard to joint marital property. (Arts. 3637-3652.)

Art. 552. The Right of Accretion.—Accretion is the right by which one heir or legatee adds to his own the portion of another; this only occurs where two or more are entitled to the same inheritance or share without special designation of the portion of each, or where one of the heirs dies before the testator, or refuses or is incapable of taking the inheritance; the words "by equal parts" or the like is not such designation of portions, which is only understood when the testator expressly orders that parts be set aside or designates

them by physical marks; but the testator may prohibit or modify the right in any way; such right does not apply where the coheir fails after the acceptance of the inheritance, as it then passes to his heirs, except in cases of usufruct; the heirs taking by accretion succeed to all the rights and obligations of the failing one, and can only refuse the accretion by refusing the inheritance. Where a legatee dies before the testator or refuses or is incapable of taking, his legacy accretes to the heirs; accretion in cases of intestacy is governed by the provisions of Art. 544. (Arts. 3653–3663.)

Art. 553. Effects of Succession.— Succession takes effect at the moment of the death or declaration of presumption of death of the person whose estate is concerned. If several are entitled to the same inheritance, the right of possession and dominion is joint until partition, and no one can convey or encumber the property. If no executor is named, each of the heirs may sue alone for the joint property of the estate, but if there is an executor only he can sue, and if he delays the heirs may have him removed. The right to claim the inheritance prescribes in twenty years and passes to the heirs. (Arts. 3664–3669.)

Art. 554. Acceptance and Refusal of Inheritance.— Persons of legal age and able to dispose of their property may accept or reject inheritances, but not in part or conditionally; married women must be authorized by their husbands or by the judge, and husbands likewise in respect of joint inheritances; minors must act through their guardians; deaf-mutes not under guardianship may act in writing or by attorney, or by special guardian if they cannot write; some heirs may accept and some refuse, the former only have the status and rights of heirs; if the heir dies before acting his heirs may do so; the acceptance or refusal relates back to the time of the ancestor's death. Acceptance may be express or by acts showing such intention; repudiation must be express and made in

writing before the judge, or by *escritura pública* if the heir is in another place. Refusal of an inheritance does not prevent an heir who is not executor from claiming any legacy left to him; one entitled to inherit both by will and by intestacy loses the latter right if he refuses the former, unless he did not know of the will. No one can even by marriage contract renounce the right to inherit from a living person, nor assign rights which he may acquire in his inheritance, nor accept or refuse without being certain of his death; after knowledge of the death, he may renounce a conditional inheritance although the condition is unfulfilled. The legal representatives of societies and corporations capable of acquiring, may accept, but cannot refuse without the approval of the Ministerio Público; public establishments can neither accept nor repudiate without the approval of the government.

Anyone having an interest in the action of the heir, may petition the judge, after nine days, to require the heir to make his declaration within at most thirty days, notifying him that if he does not do so, he will be taken to have accepted the inheritance. The acceptance or repudiation once made is irrevocable and can only be impeached for duress or fraud, except where a will unknown at the time is discovered which changes the inheritance; in this event if an acceptance is revoked the heir must return whatever he has received of the inheritance, and observing the usual rules as to good or bad faith in respect to its products. If the heir refuses an inheritance to the prejudice of his previously existing creditors, they may petition the judge for leave to accept it in his name, to the extent of their claims, any balance being payable to the person next entitled to the inheritance, who may also prevent the creditors from interfering by paying their claims.

An heir judicially declared guilty of having concealed or abstracted assets of the estate is liable for damages and to criminal punishment. One declared to be an heir at the instance of a legatee or creditor is to be recognized as such

for all purposes. Acceptance is always subject to inventory, and in no case produces confusion of goods; the heir is only liable for the ancestor's obligations, unless he is jointly liable with him, to the extent of the property received. (Arts. 3670-3702.)

CHAPTER 3.

EXECUTORS OR ADMINISTRATORS OF WILLS.

Art. 555. Who may be — How Chosen.

556. Duties of Executors.

557. Same — Inventory.

558. Same — Interventors.

Art. 555. Who May Be — How Chosen.—The person named in the will as executor (*albacea* or *ejecutor*) is recognized in law as such; where none is named or refuses to serve, the heirs will elect one from among themselves by a majority of votes; in all cases of successions, the amount of interests and not number of persons is calculated; if the interest of one person exceeds the half of the estate it will be counted as only one-fourth; if there is no majority the judge will appoint some heir. The same rules apply in cases of intestacy and where the executor appointed fails to act. An only heir will be executor unless one is named in the will; if there is no heir or he does not take, the judge will appoint the executor, unless there are legatees, who will themselves choose him; such executor will hold until the legal heirs are determined and elect an executor as herein provided.

For the purposes of administration, the husband is the legal representative of the minor wife; ascendants, of their descendants, under their *patria potestad*; guardians, of minors although emancipated and of others under guardianship; the representative, or the possessor of his goods, of the absentee; syndics, of city councils; the directors, of public establishments; the Ministerio Público, of the treasury, un-

less in the last three cases the law or regulations otherwise provide. Unless they are the only heir, judicial officers in the jurisdiction where the estate is being administered, and persons previously removed judicially from being executors, cannot be executors.

Executors may be appointed jointly or successively; if jointly no act is valid unless done by all jointly or by one duly authorized by the others, except in emergencies one may act on his own responsibility and immediately advise the others; if not appointed jointly by the testator or no order fixed, they enter upon their duties in the order in which they are named. (Arts. 3703-3717.)

Art. 556. Duties of Executors.—Acceptance is voluntary, but if accepted the executor must perform his duties; if he resigns without just cause he loses anything that is left to him; if he wishes to resign he must present his resignation within six days after notice of his appointment or after notice of the testator's death where he already knew of his appointment; if he is present while his resignation is under consideration, he must discharge the office under penalty of loss of his inheritance and the payment of all damages; the office cannot be delegated except by formal power of attorney, unless the testator otherwise provides.

The general executor must deliver to the special executor the sums or property necessary for him to discharge his part of the trust; if the legacy is conditional or deferred, the former may instead give bond for its delivery at the proper time, and the latter may in the name of the legatee require a mortgage upon the property of the estate to secure its delivery or to protect the legatee. The possession of the estate passes by force of law to the universal executor upon the death of the owner, except as provided in regard to the marital estate; he holds his share of the estate in his own right, and that of the other heirs and legatees in trust for them. Besides the powers conferred herein, the executor has

such others not contrary to law as are conferred on him by the testator or heirs, and he may bring all suits which the deceased might have which are not extinguished by his death.

The general executor must present the will; secure the assets of the estate; make inventories; administer the property and render accounts of his administration; pay all debts of the estate; make distribution and adjudication of the property among the heirs and legatees; defend the estate and the validity of the will in and out of court, and represent the estate in all suits by or against it, and perform all other legal duties. (Arts. 3718–3730.)

Art. 557. Same — Inventory.— An inventory must be made and approved before creditors or legatees can be paid, except funeral and medical expenses of the last illness and claims in suit at the time of death. If appointed in the will and having it in his possession, the executor must present it within eight days after the testator's death; he must allow the heirs to have copy of the entire will and the legatees copy of the clauses concerning them. If no executor is otherwise selected, or in case of intestacy, any heir may move the appointment of one, notice of which will be given to the interested parties, and the judge will make the appointment as provided in Art. 555. The executor will permit nothing to be removed before the inventory is made, unless the fact that it belongs to a third person appears from the will, or by *escritura pública*, or from books kept in due form if the deceased was a merchant; in such cases the executor will simply note the fact on the margin of the respective entries, leaving the ownership to be settled by the court, being liable for all damages for the violation of these requirements. A provision exempting the executor from making inventory and rendering accounts is void except where there is only one heir and no legatees; the obligation of accounting passes to his heirs.

Within the first month of administration the executor,

with the concurrence of the heirs, will fix the amount of expenses to be incurred in the administration and the number and salaries of employés; if it is necessary to sell any property to pay debts or expenses, he will do so with their assent or by order of court if they refuse consent. The executor cannot buy or lease, or encumber the estate or any legacy, or make any contract in regard thereto, nor compromise any matter of the estate, without the consent of the heirs or legatees. If the testator fixes no time for settlement of the estate, it must be settled in one year from its acceptance or from the end of any litigation over the will, and any extension of such time, if not fixed by the testator, or granted by the majority of the heirs or legatees, can be only for one year. The accounts must be approved by all the heirs; anyone dissenting may at his own cost bring suit as provided in the Code of Procedure; if the treasury is interested in the accounts, the Ministerio Público must join in their approval. When the accounts are approved the parties may make any arrangements in regard to them which are legal. The costs of administration and any attorney's fees incurred, will be paid out of the estate; the testator may allow the executor any compensation he wishes; if none is fixed, he is entitled to two per cent. upon the net value of the estate, besides the schedule fees if he personally makes the partition; if he has been left a legacy for his services, or if he fails to present the inventory in due time, he cannot recover compensation. If there are several joint executors, the compensation will be divided among them; if they are not joint, it will be divided in proportion to the time and labor each has given to the administration. Where a legacy has been left jointly to the executors as compensation, the share of any who refuses it will accrete to the others. (Arts. 3731-3760.)

Art. 558. Same — Interventors.— The testator, or the majority of the heirs not administering, may appoint an inter-

ventor to watch in behalf of all, or if they do not agree the judge may make the appointment from among names proposed by the heirs; such interventor cannot even temporarily have possession of the assets, but is limited to seeing that the executor faithfully performs his duties, always in association with the party whose interests he may deem prejudiced, in whose name and by his express consent he will take any legal or extralegal steps. The interventor is entitled to a copy of the entire will unless the testator otherwise provides; he must be of legal age and capable of contracting.

An interventor must be appointed, where any heir is a minor married woman whose husband is judicially separated from her or from the administration of her property; where any heir is absent or unknown; where the amount of legacies equals or exceeds the share of the heir or executor; where any legacy has been left for public charities.

The duties of executor and interventor cease upon the termination of their trust, by their death or legally declared incapacity; by resignation accepted by the judge upon hearing the interested parties, including the Ministerio Público where minors or the treasury is concerned; by the lapse of the time fixed by the testator or by law; by removal, which can only be by judgment rendered upon the petition of a proper party after a hearing of the interested party. (Arts. 3761-3770.)

CHAPTER 4.

FINAL SETTLEMENT OF ESTATE.

Art. 559. Inventory — Payment of Debts.

560. Distribution — Partition.

561. Effects of Partition.

562. Rescission of Partition.

Art. 559. Inventory — Payment of Debts.— Within fifteen days after notice of his appointment, the final executor must

proceed to have inventory made, in accordance with the Code of Procedure; if he fails to move, any heir may do so, and will be considered associated with the executor, who cannot do any act without his consent, or if they cannot agree, the judge will decide. Upon the judicial approval of the inventory, the executor will proceed to the settlement of the estate; paying first, out of the assets of the estate, if not already paid as they may be, the expenses of funeral and last sickness; secondly, he will pay, if yet unpaid, the costs of administration and alimentary charges; if there is no money to pay the foregoing he must sell by order of court sufficient personal or real property to cover them; next he will pay the ordinary debts of the deceased which are payable.

If any concurrence of creditors is pending, the executor will only pay according to the order of classification; otherwise, creditors will be paid in the order of presentation, but if some preferred creditors do not appear, a refunding bond may be required of those who are paid. Legacies cannot be paid until debts are paid or provided for by reservation of sufficient property, preserving any special encumbrances there may be on it; creditors presenting themselves after legatees are paid can only have recourse against these if there is not sufficient assets of the estate to pay them. Sale of assets to pay debts and legacies must be by public auction unless the parties otherwise agree, and the proceeds will be applied as they may agree or the judge decide. (Arts. 3771-3787.)

Art. 560. Distribution — Partition.—The inventory and accounts of administration being approved, the executor must proceed to make distribution (*partición*) of the estate; the heirs cannot be required even by the testator to allow the property to remain undivided, and distribution can only be suspended to await a posthumous birth or by express agreement of the parties, except where minors are concerned the guardian and Ministerio Público must be heard, and the decree of approval will fix the time it is to continue. Where

the testator makes the partition it will be observed, saving the rights of third persons; partition may also be made between the parties in the same form as donations; if all are of age it may be made extrajudicially, but by order of court where anyone is a minor or if the majority so request; the partition must be by *escritura pública* where any of the property requires that form of conveyance.

The heirs must reciprocally adjust the rents and profits each has received from the estate and expenses and damages caused by fault or negligence; debts contracted while the property is undivided are preferred. If the testator bequeathed some annuity without charging it upon any particular heir or legatee, and also in respect to alimentary annuities, it will be capitalized at six per cent. a year, and the capital or equivalent property will be set apart and delivered to the beneficiary, who will hold it as a usufructuary; the part to which each heir will be entitled upon the extinction of the same will be stated in the schedule of partition.

The action for partition prescribes in twenty years from the ancestor's death against the heir who is in possession in his own name, but if they hold in common or one in the name of all there is no prescription. An expectancy cannot be assigned before the ancestor's death. If one heir wishes to sell, the coheirs have the *derecho del tanto* for three days after notice on the same terms as a stranger purchaser, but not where one heir assigns to another or donates to the stranger. Partition in case of representation follows the rules applicable to that of the principal estate. The costs of partition will be deducted from the common fund, but expenses incurred by a particular interest must be paid by it. (Arts. 3788-3807.)

Art. 561. Effects of Partition.—Partition legally made vests in each heir the exclusive title of the property assigned to him; they are reciprocally bound to warrant each other

against eviction and may require mortgage security of each other for such liability, which only ceases where the ancestor made the partition during his lifetime, or they have expressly otherwise agreed in making partition, or where the eviction takes place for some cause posterior to the partition or through the fault of the one evicted. The other heirs will indemnify the one evicted for the part lost in proportion to their respective shares; if anyone is insolvent his share will be distributed among the others including the loser, and they may recover from the insolvent when he becomes in better condition. If a security is assigned to one heir as collectable, the coheirs only warrant the debtor's solvency at the time and are not responsible for his subsequent insolvency nor for uncollectable debts. Where the inheritance of one heir is attached or an ordinary judgment rendered against him on account of it, he may require the others to give bond for their own liability, and enjoin their disposition of their inherited property if they do not. (Arts. 3808-3817.)

Art. 562. Rescission of Partition.—Extrajudicial partitions can only be rescinded as other contracts may be; those made judicially only as provided in the Code of Procedure. A partition which pretermits some heir will not be rescinded unless for fraud or bad faith of the others, but they must contribute to the former's share. If one of the distributees is fictitious, the partition is void so far as he is concerned and the others are prejudiced, but it is not otherwise affected. Where any property is omitted, a supplementary partition will be made of it under the same general provisions. (Arts. 3818-3823.)

BOOK VI. COMMERCIAL LAW.

(*Código de Comercio de 1889.*)

TITLE I. OF MERCHANTS.

CHAPTER 1.

GENERAL PROVISIONS.

Art. 563. Application of Code.

564. Who are Merchants.

565. Who are Competent.

566. Who are not Competent.

567. Foreigners — Commercial Rights.

568. Obligations Common to all Merchants.

569. Mercantile Announcements.

Art. 563. Application of Code.— The Code of Commerce is applicable only to commercial acts; in the absence of specific provisions of the Code, the principles of the common commercial law are to be applied. (Arts. 1–2.)

Art. 564. Who are Merchants.— Merchants are: 1, Individuals, having legal capacity to engage in commerce, who make of it their ordinary occupation; 2, companies organized in conformity with the mercantile laws; 3, foreign companies, their agencies or branches, which engage in commerce in Mexico. Persons who casually perform some commercial operation, whether having a fixed establishment or not, and although not merchants in a legal sense, are governed by the

commercial law; therefore, farmers and manufacturers and others who have a warehouse or store in a town for the sale of their products in their original form, are considered merchants so far as concerns such operations. (Arts. 3-4.)

Art. 565. Who are Competent.—All persons who according to the ordinary laws are capable of contracting, and are not otherwise prohibited, may engage in commerce; including minors and married women over eighteen years of age, the former when duly emancipated and authorized by their parents or guardians, in which event they are regarded as of full age; the latter with the authorization of their husbands given by *escritura pública*; but no such authorization is necessary in cases of separation, or the absence, interdiction or loss of civil rights by the husband duly declared according to law. A married woman engaged in commerce may mortgage her real property as security for her mercantile obligations, and appear in judicial proceedings, without marital consent; but cannot encumber her husband's or the community property unless specially authorized in the instrument giving consent for her to engage in commerce. Such authorization may be revoked by the husband, but it cannot affect the rights of third persons until it has been posted conspicuously in the wife's place of business and published in a newspaper of the place or of the nearest locality for ninety days. If the woman is engaged in commerce at the time of her marriage, the consent of her husband is necessary in order to continue it; but such consent is presumed, unless he makes the publication above mentioned that the wife has ceased to do business. (Arts. 5-11.)

Art. 566. Who not Competent.—Brokers, bankrupts who have not been discharged, and persons convicted by final judgment of offenses against property, including forgery, embezzlement, bribery and conspiracy, cannot engage in commerce. (Art. 12.)

Art. 567. Foreigners — Commercial Rights. — Foreigners are free to engage in commerce in the Republic, in accordance with Treaties with their respective nations, and with the laws regulating the rights of foreigners, and in subjection to the Commercial Code and other laws of the country. Corporations legally created in foreign countries, may establish themselves, or their branches, and engage in business in Mexico, upon complying with the special requirements of the Code in regard to organizing and doing business in Mexico and submitting to the jurisdiction of the Mexican courts. Their capacity to contract is governed by the provisions of Art. 653. (Arts. 13-15.)

Art. 568. Obligations Common to all Merchants.— All merchants are obliged: 1, To publish through the press the announcement of the kind of business in which they propose to engage, giving its principal circumstances, together with changes adopted from time to time; 2, to record in the Commercial Register all documents whose tenor and authenticity must be made public; 3, to follow a rigorously uniform system of accounts; and, 4, to preserve all correspondence concerning their mercantile business. (Art. 16.)

Art. 569. Mercantile Announcements.— Merchants are also obliged: 1, To give notice by means of circulars addressed to all merchants in the places in which they have their residence, branches, relations, or mercantile correspondents, of the opening of their establishment or office; which circular shall contain: The name of the establishment or office, with its location and object; the name of the person in charge of it, with a copy of his signature; if a company, its name or denomination, and its nature, and the name of its manager or managers, and the person or persons authorized to use them; and the description of any branches or agencies; 2, also to give like notice of any changes which may occur in the foregoing particulars; 3, to publish in the official period-

ical, or if there be none, in some other newspaper, all circulars which they may issue, as well as a statement of the liquidation, upon the closing of the business or office. (Art. 17.)

TITLE II.

MERCANTILE BOOKKEEPING.

CHAPTER 1.

SPECIAL BOOKKEEPING REQUIREMENTS.

- Art. 570.** Books Required to be Kept.
571. Must be in Spanish.
572. Inventory Book.
573. Day Book.
574. The Ledger.
575. Minute Book.
576. Inspection of Books and Papers.
577. Preserving Books.
578. Correspondence.

Art. 570. Books Required to be Kept.—A merchant is obliged to keep account of all transactions in at least three books: The book of inventories and balances, the general day-book, and the ledger, or book of current accounts. Corporations and stock companies must also keep minute books containing all records of stockholders' and directors' meetings. These books are of absolute necessity in all mercantile business, and must be kept bound, paged, and properly stamped; they must be kept by the merchant himself or his authorized agent; in the absence of proof, he is presumed to have authorized those who keep them. The entries must be made, and correspondence kept, with clearness, in regular order of dates and transactions, without leaving any blank spaces, and they cannot in any respect be altered. Any errors which may have occurred shall be corrected by new

entries, making reference to the incorrect ones. (Arts. 33–36.)

Art. 571. Must be in Spanish.— All books must be kept in the Spanish language, even though the merchant is a foreigner, under a penalty of from fifty to three hundred pesos; besides which he will be compelled, at his own expense, to make translations of all entries which are ordered to be examined, and to have all the books translated into Spanish. (Arts. 36–37.)

Art. 572. Inventory Book.— The book of inventories and balances shall begin with the inventory which the merchant must make on beginning business, and shall contain: 1, An exact account of the money, values, credits, bills receivable, real and personal property, merchandise and effects of all kinds, appraised at their actual value, which constitute his assets; 2, an exact account of all the debts and pending obligations of every kind, if he have any, which constitute his liabilities; 3, the statement of the exact difference between assets and liabilities, which will be the capital with which he begins business. Also at the end of each year, he will enter in the same book the general balance of his business, with the foregoing details, corresponding with his day-book, without omission, and under his signature and responsibility. (Art. 38.)

Art. 573. Day-book.— The first entry in the day-book shall be the result of the above inventory, divided into one or more consecutive accounts, according to the system of bookkeeping adopted. Afterwards, from day to day and in regular sequence, shall follow all transactions of the merchant's business, on his own account or on that of another, stating the circumstances and character of each transaction, and its result to his debit or credit, in such way that each entry shall

show who is the debtor and who the creditor in the transaction to which it relates.

When the transactions are numerous, whatever be their importance, or when they are effected outside the domicile, all which refer to each account and are made in each day, may be stated in a single entry, but preserving the order in which they took place if they are detailed.

All amounts of cash which the merchant may take for his own use, shall be entered in the same way, with its date, and shall be carried in a special account in the ledger. (Art. 39.)

Art. 574. The Ledger.—The accounts current with each object or person shall be opened by debit and credit in the ledger, to which shall be transferred in strict order of dates, the entries of the day-book. (Art. 40.)

Art. 575. Minute Book.—A minute book must be kept by all corporations. Records of stockholders' meetings shall contain: The date, names of those present and number of shares represented by each, with number of votes each may cast; all resolutions acted on, which must be entered in full, stating the vote cast, when not *viva voce* (*económica*), and everything necessary to a full understanding of the resolution. Records of directors' meetings need only contain the date, those present, and a statement of the resolutions adopted. The records must be signed by the persons authorized by the by-laws. (Art. 41.)

Art. 576. Inspection of Books and Papers.—No official inquiry can be made by the courts or authorities to ascertain whether merchants keep proper books; but they must be exhibited when required for the purpose of ascertaining whether they are properly stamped. Neither may any party have an order of court for a general production or inspection of the books, letters, accounts and documents of merchants,

except in cases of administration of the estate of a deceased merchant, liquidation of the company, general commercial management on account of another person, or of failure; with which exceptions, the inspection can only be decreed when the person to whom the books belong has an interest or liability in the matter in which the inspection is sought. Such inspection shall be made in the merchant's office, in his presence or that of someone appointed by him, and shall be limited to matters directly related with the pending suit, although including those outside the special account of the party procuring the inspection. If the books are beyond the jurisdiction of the court, the inspection may be made wherever they are. (Arts. 42-45.)

Art. 577. Preserving Books.—Merchants must keep their mercantile books until their accounts are settled and for ten years afterwards; their heirs must do the same. (Art. 46.)

Art. 578. Correspondence.—Merchants must preserve in good order all the letters and telegrams which they receive in relation to their business and affairs, and must endorse on them the date on which they were received and answered, or the fact that they were not answered. All the letters and telegrams which he sends in regard to his business must be copied in full, including signature, in the order of their dates, into a copying-book, either by hand or any mechanical process. Correspondence need not be in Spanish, but otherwise it must be kept with the same system that books are required to be kept. The courts may on their own motion or at the instance of parties, order all letters received and copies of those sent by parties to the suit, relating to the matter in litigation, to be produced in court, specifying in the order those which are to be copied. (Arts. 47-50.)

TITLE III.

BROKERS. (*Corredores.*)

CHAPTER 1.

GENERAL RULES.

Art. 579. Definition and Kinds.

580. Qualifications.

581. Brokers' Minutes and "Register."

582. Probative Effect.

583. Duties of Brokers.

584. Prohibited Acts.

Art. 579. Definition and Kinds.—A broker (*corredor*) is an auxiliary commercial agent through whom commercial contracts are proposed, adjusted and executed. There are five classes: 1, Exchange brokers, for the handling of public bonds, letters of exchange, mining and corporate stocks, drafts, notes and other negotiable securities, coin and bullion, and loans; 2, merchandise brokers, for handling all kinds of merchandise; 3, insurance brokers, for all kinds of insurance risks; 4, freight brokers, for all kinds of transportation except maritime; 5, marine brokers, for all contracts in regard to maritime commerce; these classes may otherwise be divided by regulations to suit the needs of each place; a broker may qualify for several of these branches of the business. The employment of brokers in commercial transactions is optional; but contracts executed without them must be proved according to their nature, the parties concerned in making them having none of the functions of brokers. (Arts. 51–53.)

Art. 580. Qualifications.—A broker must be a man, twenty-one years old, a Mexican by birth or naturalization, domiciled in the place where he does business, have been engaged in commerce in Mexico for five years, be of good

moral character, in the exercise of his civil rights and the free administration of his property, and have a business education; he must not be in the public or military service, nor be in the employ of any merchant or company. He must have a commission issued, in the Federal District by the Department of Fomento, in the States by the Governor, and in the Territories by the *Jefe Político*, which commission must be renewed every year that he continues in business. They can only act in the place for which they are appointed, except in casual instances, unless newly commissioned for such other place upon giving new bonds. They may qualify for several branches of the business upon giving the required bonds in each branch. They cannot begin business before giving bond, which must be first recorded in the Commercial Register; the sureties must be good and solvent, and should they cease to be, the broker cannot continue in business until he furnishes others. The bonds must be conditioned for the performance of the obligations and responsibilities which they may contract during the exercise of their brokerage business. The sureties cannot enjoy the rights of "*orden, excusión y división.*" (Arts. 54-62.)

Art. 581. Brokers' Minutes and "Register."—Brokers must make a "minute" of all contracts made through their intervention, which shall state all the circumstances and conditions agreed upon, and be signed by the broker and by the parties in his presence, a certified copy of which minute shall be delivered to each of the parties within twenty-four business hours after its execution. All such minutes must be kept together in numerical order, and be copied day by day in the same order, without erasures, alterations, interlineations or abbreviations, in a special book which they must keep under the style of "Register"; these and all other records of brokers must be preserved and stored away as provided by law. (Arts. 63-65.)

Art. 582. Probative Effect.—The policies authorized by brokers, the entries in their Registers, and the certified copies which they issue of such entries, have the same probative value and legal effect as public Notarial Acts (*escrituras públicas*). (Art. 66.)

Art. 583. Duties of Brokers.—It is the duty of brokers: To assure themselves of the identity and legal capacity to contract of the persons for whom they act; to conduct negotiations precisely so as not to mislead any party into error; to preserve secrecy in regard to all negotiations, and not reveal until the matter is closed the names of the parties without their consent, unless required by the nature of the transaction or by law; to issue to the parties when requested certified copies of the entries in their Register; to personally exercise all their functions, without making use of intermediaries; to guarantee (*responder de*) the authenticity of the signature of the drawer or of the last endorser of negotiable instruments, and to receive and deliver them to the persons entitled; to be present at the delivery of goods when any of the parties so requires; to preserve samples of merchandise, when the sale is by sample, marked with his seal and with those of the parties, until the buyer accepts the goods; to sign bills of lading in shipping contracts; and to serve as experts when appointed by the authorities, and to make reports to them in the matters referred to them. (Art. 67.)

Art. 584. Prohibited Acts.—Brokers are prohibited: To trade on their own account or as commission merchants, or to be factors, employés or partners of a merchant, or directors, managers or “comisarios” of companies; to acquire for themselves the goods about which they conduct negotiations; to authorize contracts in any way prohibited by law; to guarantee contracts in which they intervene, to be endorsers of instruments negotiated by them, and generally to assume

any responsibility in the matters which they handle beyond the simple discharge of their duty as brokers; to authorize contracts in their own behalf or that of their clients; and to issue certified copies of minutes which are not recorded in their Register, or not to issue them complete.

Nor can brokers make assignments of their property, and their bankruptcy shall always be held as fraudulent. They are subject to penalties which are prescribed in the law for crimes which they may commit in the discharge of their duties; and are under the supervision of the “ College of Brokers ” in their respective localities, under the terms of the Code. (Arts. 68–74.)

TITLE IV.

COMMERCE AND COMMERCIAL CONTRACTS.

CHAPTER 1.

COMMERCIAL TRANSACTIONS.

Art. 585. Acts of Commerce.

Art. 585. Acts of Commerce.— The law regards as commercial transactions: 1, All acquisitions, transfers and hirings, for purposes of commercial speculation, of necessities, articles, movables or merchandise, in their natural or manufactured state; 2, purchases and sales of real property, when made for the same purpose; 3, purchases and sales of interests, shares and obligations of mercantile companies; 4, contracts in regard to obligations of the State or other securities current in commerce; 5–11, the business (*empresas*) or enterprises: Of provisions and supplies; of construction and public and private works; of factories and manufactures; of transportation of persons or things by land or water; of book-selling, editorial and typographical establishments; of commissions, agencies, commercial business offices, and

public auction houses; of public exhibitions; 12, mercantile commission operations; 13, operations of agency in mercantile business; 14, banking operations; 15, all contracts in regard to maritime commerce and inland and foreign navigation; 16, all kinds of insurance contracts; 17, bailments on account of commerce; 18, bailments in general warehouses, and all operations in respect of warehouse certificates and pledges (*bonos de prenda*) issued by them; 19, checks, letters of exchange or remittances of money from one place to another, between every class of persons; 20, drafts or other instruments payable to order or to bearer, and the obligations of merchants, unless they are shown to arise out of other than commercial transactions; 21, obligations between merchants and bankers, unless of a purely civil nature; 22, the contracts and obligations of the employés of merchants, so far as they concern the business of their employer; 23, the sales of products of his farm by the owner or cultivator; all other transactions of a similar character to the foregoing. In cases of doubt, the commercial character of the transaction will be determined by judicial decision.

The purchase of articles or merchandise which a merchant makes for his own use or that of his family, and petty sales made by workmen as the natural consequence of the practice of their trade, are not acts of commerce. (Arts. 75-76.)

CHAPTER 2.

COMMERCIAL CONTRACTS.

Art. 586. Void Contracts.

587. Formalities — Intention.

588. Contracts by Correspondence.

589. Brokers' Contracts.

590. Time and Place of Enforcement.

591. Days of Grace — Computing Time.

592. Kind and Quality of Goods Demandable.

593. Penalties — Election.

594. Commercial Contracts — Civil Law.

Art. 586. Void Contracts.—Illegal agreements give rise to no obligation or cause of action, although they involve commercial transactions. (Art. 77.)

Art. 587. Formalities — Intention.—In commercial agreements every one is obligated in the manner and terms in which it appears he intended to bind himself, the validity of commercial acts not depending on the observance of particular formalities or requisites; except: 1, Those contracts which the Code of Commerce or other laws require to be reduced to writing, or require forms or solemnities for their validity; 2, contracts executed in a foreign country where the law requires particular writings, forms or solemnities for their validity, although they are not required by the Mexican law. In either such case contracts not in conformity with such requirements neither give rise to any obligation nor to any cause of action in court. (Arts. 78–79.)

Art. 588. Contracts by Correspondence.—Commercial contracts entered into by correspondence are completed from the time of the answer accepting the offer or the conditions modifying it. Telegraphic correspondence is only binding between parties who have previously agreed, by written contract, upon this method, and when the telegrams comply with the conditions or conventional signs which the parties may have previously agreed upon. (Art. 80.)

Art 589. Brokers' Contracts.—Contracts made through Brokers, are completed from the time the parties sign the Broker's "minute." (Art. 82.)

Art. 590. Time and Place of Enforcement.—Commercial contracts which have no time fixed by the parties or by the Code, are enforceable ten days from their date, if they give rise to ordinary actions, and on the day after date if they give rise to "executive" actions. The effects of delay in

their performance begin, where the time is fixed, on the day after maturity; if the time is not fixed, then on the day that the creditor makes demand on the debtor, either by suit, or before a Notary or two witnesses. They must be performed in the place designated in the contract, or if not designated, in the place where according to the nature of the business or the intention of the parties, they should be performed, by consent of the parties or judicial decision. (Arts. 83, 85-86.)

Art. 591. Days of Grace — Computing Time.— Days of grace are not recognized in commercial contracts; and in computing time, the day is of twenty-four hours, the months according to the Gregorian calendar, and the year is of 365 days. (Art. 84.)

Art. 592. Kind and Quality of Goods Demandable.— If the contract does not clearly specify the kind and quality of goods to be delivered, the debtor can only be required to deliver merchandise of medium kind and quality. (Art. 87.)

Art. 593. Penalties — Election.— In commercial contracts which provide a penalty for non-performance, the injured party may demand the performance of the contract or the prescribed penalty; but the election of one remedy extinguishes the other. (Art. 88.)

Art. 594. Commercial Contracts — Civil Law.— Except as modified by the Code of Commerce, the provisions of the civil law in regard to the capacity of the contracting parties, and the defenses and causes which rescind or invalidate contracts, are applicable to commercial transactions. (Art. 81.)

TITLE V.

MERCANTILE COMMISSIONS. (*Mandato Mercantil.*)

CHAPTER 1.

AGENTS.

COMMISSION MERCHANTS. (COMISIONISTAS.)

Art. 595. Definitions.

596. Acceptance or Refusal.

597. Rights and Duties.

598. Same — Instructions.

599. Same — Accounts.

Art. 595. Definitions — Appointment and Revocation.—

The mandate applied to concrete acts of commerce is termed mercantile commission; the principal is called the *comitente* and the agent *comisionista*; (the words “principal” and “comisionista” being used throughout the chapter.) A power of attorney by *escritura pública* is not required, but authority may be conferred in writing or orally; if orally, it must be ratified in writing before the business is ended.

The principal may at any time revoke the commission conferred on the *comisionista*; such revocation cannot affect contracting third persons not notified of it, but the *comisionista* is liable to the principal for failure to notify them. The commission is rescinded by the death or incapacity of the *comisionista*, but it is not rescinded by that of the principal, although it may be revoked by his representatives. (Arts. 273–274, 307–308.)

Art. 596. Acceptance or Refusal.—The *comisionista* may accept or refuse the business offered him, but in case of refusal he must so notify the principal immediately, or by the next mail; anything done towards undertaking the business,

is an acceptance of it, and he must conduct it to the end. Although he refuse the business, he is bound to take steps necessary to preserve any effects sent him by the principal, until the latter may secure another agent, and such acts are not to be taken as an acceptance. If he fails without legal cause to notify the principal of his refusal, or to finish any business accepted, he is liable for all damages resulting. (Arts. 275-278.)

Art. 597. Rights and Duties.—The *comisionista* must personally conduct the business entrusted to him and cannot delegate it to another without consent of the principal, but he may employ the customary clerks to attend to minor details. When goods sent to a *comisionista* are not of value sufficient to cover the costs involved in handling them, or where the principal fails to appoint another agent after notice of the refusal of the first, they may be sold, through two brokers or two merchants if there are no brokers, after first certifying their amount, quality and price, and the net proceeds will be deposited to the order of the principal in an institution of credit, or if there is none, with the person named for that purpose by the judge.

Where funds are required to execute the commission, the *comisionista* need not undertake it until the principal furnishes sufficient funds, and he may suspend the operation where those received are exhausted; but where the *comisionista* undertakes to advance the funds he must furnish them except in case of suspension of payments or bankruptcy of the principal.

Unless otherwise stipulated the *comisionista* may conduct the business in his own name or in that of the principal; where he contracts in his own name the right of action lies directly between him and the third party, and he need not disclose his principal except in contracts of insurance; where he contracts in name of the principal he assumes no personal

liability, the common law rules as to simple mercantile agency applying. (Arts. 279–285.)

Art. 598. Same — Instructions.— The *comisionista* must follow the instructions of his principal and in no case act contrary to them, and must consult the principal in all unforeseen cases wherever possible; if not possible or if he is authorized to use his discretion, he must use such diligence as if the business were his own. If by unforeseen circumstances it becomes impracticable, in the judgment of the *comisionista*, to execute the commission, he may suspend his operations and notify the principal in the quickest way possible. Should he violate or exceed his instructions, he is not only liable for “*daños y perjuicios*,” but he is bound by the contracts made unless the principal prefers to ratify them.

The *comisionista* is bound to promptly advise the principal of all circumstances which might induce him to revoke or change the instructions, and must also notify him without delay of having finished the business. He must observe the laws and regulations governing the business, and is liable for their violation; if such violation is by the express orders of the principal, both are liable. For loss of funds entrusted to him the *comisionista* is liable, unless in remitting them he follows the instructions of the principal. If he should convert to another use funds received on account of the commission, he is liable for “*daños y perjuicios*,” and must refund the money with interest from the day it was received, besides being criminally liable. (Arts. 286–293.)

Art. 599. Same — Accounts.— The *comisionista* is liable for goods and merchandise entrusted to him according to their invoice, unless upon receipt of them it appears by the certificate of two brokers or merchants, if there are no brokers, that the same are damaged or deteriorated. He is bound to keep the effects entrusted to him in the same condition as when received, unless they are destroyed or damaged by

accident, *vis major*, the lapse of time or inherent defects; in the two latter instances he must promptly advise the principal of the facts, verified by the certificate of two brokers or merchants. If it should be necessary to forward goods to another point, the *comisionista* must assume the duties of a shipper and see to their transportation; he must insure the goods, if so directed and provided with the money, or if he has undertaken to advance it.

When the business is finished the *comisionista* must render a complete and exact account from his books, and pay over the proceeds to the principal, together with interest in case of delay in payment. No *comisionista* can buy for himself or any one else the goods sent him to sell, nor without the express consent of the principal can he sell goods he has been ordered to buy. *Comisionistas* must not alter the marks on goods which they buy or sell for another person, nor have goods of the same kind belonging to different owners, under the same mark, without some other mark to distinguish the goods of each principal. The *comisionista* cannot unless duly authorized make loans or sell on time or credit; should he do so, the principal may require him to pay in cash, leaving him to realize from the credit. If with such authorization he sells on time, he must notify the principal, giving the names of the buyers, and if he fails to do so, the principal may treat the sales as if for cash. If the *comisionista* fails to make collections or to use all legal means to enforce them, he is liable for all losses caused by his neglect.

Unless otherwise agreed, the *comisionista* is entitled to pay for his services, the amount of which, where not agreed upon, shall be regulated by the usages of the place where the commission is performed; the principal is bound to repay in cash, upon presentation of proper accounts, all expenses incurred by the *comisionista*, with interest from the time of the disbursement; and the *comisionista* is entitled to a lien on all property of the principal actually or constructively

in his possession to secure the payment of such disbursements and commissions. (Art. 294-306.)

CHAPTER 2.

FACTORS AND CLERKS.

Art. 600. Definitions — Incidents.

601. Factors — Qualifications and Duties.

602. Clerks — General Rules.

Art. 600. Definitions — Incidents.— Every merchant may employ factors and clerks (*dependientes*) in his business; factors are those who have the management of any manufacturing or commercial establishment, or are authorized to contract in respect to all its business in the name and on account of the owner; clerks are those who constantly exercise some functions in the business for the owner. Neither can delegate his duties except by consent of the employer; they are entitled to be reimbursed for any expenses or losses incurred in the discharge of their duties, unless otherwise agreed; and they are liable to the employer for any losses caused him by their fault, negligence or disregard of instructions. If the employer permits them to be interested in any of his transactions, they will to that extent be regarded as associates, unless such interest is only in the profits of the venture, when it will be considered as salary. (Arts. 309, 318, 325-327.)

Art. 601. Factors — Qualifications and Duties.— Factors must have legal capacity to contract, and have written authority or power of attorney from the person whom they represent; they must trade and contract in the name of their principals, which fact must appear in the documents which they sign as such; they may also contract in their own name. Unless expressly authorized by their principals, they cannot deal or be interested in the same kind of business as that of

their principals. Where the contract is executed by the factor as such the principal is bound; if in his own name he alone is liable. Where the contract is made in his own name but on account of the principal, either may be sued by the other party. A contract made by the factor in regard to objects within the scope of the business entrusted to him, will be presumed to be made for the principal, although not so declared in the contract, or though the factor exceeded his powers or is guilty of an abuse of confidence; likewise the principal is bound by contracts not within the same scope, where the factor acted under orders of the principal or the latter approved them expressly or by positive acts. Fines imposed on the factor for violations of the law in the course of his employment are recoverable from the principal. The authority of the factor continues until it is expressly revoked or the establishment under his management is transferred; and his acts and contracts are valid as to the principal until the factor has knowledge of such revocation or transfer, and as to third persons until the inscription and publication of such revocation. (Arts. 310-320.)

Art. 602. Clerks — General Rules.— Principals are bound by the acts of clerks (*dependientes*) in all matters entrusted to them. Clerks authorized to sell by retail in a public store are presumed authorized to receive the amount of sales and give receipts; also in respect of sales at wholesale where the sale is for cash and the payment is made in the store. They may also receive goods on behalf of their principals.

Traveling representatives (*dependientes viajantes*) authorized by letter or other document to transact certain business, bind their principals within the scope of such written authority. The principal must keep detailed accounts with his clerks.

If in the contract between principal and clerk no time is fixed, either may terminate it upon one month's notice; if it is for a fixed time, neither may terminate it sooner without the

consent of the other, and is liable for “*daños y perjuicios*” if he does so. Principals may discharge their clerks before the time agreed: For fraud or abuse of confidence in their employment; for doing any act of commerce on their own account without permission; for serious want of respect to the principal or his family or dependents. Clerks may leave their employment before the time agreed: For failure of the principal to fulfill any of the conditions in favor of the clerk; for bad treatment or serious offenses on the part of the principal. (Arts. 321-324, 328-331.)

TITLE VI.

COMMERCIAL BAILMENTS.¹ (Depósito.)

CHAPTER 1.

GENERAL RULES.

Art. 603. Commercial Bailments — Rules.

604. Same — Special Rules.

Art. 603. Commercial Bailments — Rules.— A bailment (*depósito*) is commercial if the things bailed are objects of commerce, or if the bailment is made as the result of a commercial transaction. The bailment is effected by the delivery of the thing bailed to the bailee, (*depositario*), who is entitled unless otherwise agreed, to receive compensation for the bailment, to be fixed in the contract or according to the usages of the place; he must keep the deposit in the condition in which it was received, and return it to the bailor (*deposi-ante*), with any documents he may have, upon demand, and he is liable for any deterioration, “*daños y perjuicios*” which the thing may suffer while deposited, through his fault or negligence. (Arts. 332-335.)

Art. 604. Same — Special Rules.— Where the deposit is of

¹ See Civil Law of Bailments, *ante*, Arts. 440-443.

cash in specified pieces, or when it is delivered closed and sealed, the bailor bears any increase or decrease in its value; but the bailment is at the risk of the bailee, and he is liable for any loss unless he prove that it was due to *vis major* or unavoidable accident. Where such deposit of cash is made without specification, or not closed and sealed, the bailee is only liable for the results of his fault or negligence.

The bailee of interest-bearing evidences of debt or documents must collect the interest when it becomes due, and take all necessary steps to preserve their value and the legal rights attaching to the same.

Whenever the bailee disposes of the thing bailed with the consent of the bailor, the rules of bailment cease to apply, and those arising from the new contract govern.

Bailments made in banks, warehouses, institutions of credit, or in any other kind of company, are governed in the first place by the by-laws; secondly by the provisions of the Code of Commerce, and finally by the rules of common law applicable to all bailments. (Arts. 336–339.)

CHAPTER 2.

GENERAL WAREHOUSES.

Art. 605. Warehouses — Certificates.

606. Assignment — Effect.

607. Non-Payment — Sale.

608. Division of Certificates — Loss.

Art. 605. Warehouses — Certificates.— The name “general warehouse of deposit” (*almacén general de depósito*) is given to establishments engaged in the business of the storage, preservation, custody, and sometimes sale of merchandise, and issuance of documents called “certificates of deposit” (*certificados de depósito*) and “bond of pledge” (*bono de prenda*). The “*certificado de depósito*” represents the goods, the title to which passes with the transfer of the certifi-

cates; the "*bono de prenda*" evidences the contract of loan with warranty of the goods deposited and confers the rights and privileges of a pledge creditor. To be valid, both the certificate and the bond must recite precisely the name, business and residence of the depositor, and the nature, quantity, quality, condition and value of the goods; they must be issued from stub-books and form one set of titles; they shall recite whether the goods are insured and what charges are against them. The rules as to "Mercantile Deposit" apply to Warehouses. The conditions and requisites for establishing and conducting warehouses shall be determined by the Law of Institutions of Credit. (Arts. 340-343, 355, 358.)

Art. 606. Assignment — Effect.— The certificates and bonds may be assigned by endorsement, together or separately; the endorsement of the bond alone is equivalent to the pledge of the goods to the assignee; that of the certificate carries the title to the property subject to the payment of the debt evidenced by the bond. Where the two documents are separately endorsed, the date of endorsement, and the name, business and domicile of the endorsee must be recited. Upon endorsement of a *bono de prenda*, it must recite on its face the entire amount of the debt and interest secured and the date of its maturity. The endorsement of the certificate is not valid unless it is noted both on the certificate and on the stub kept at the warehouse. The endorsement of both documents may be in blank, and confers on the bearer the rights of an endorsee. (Arts. 344-346.)

Art. 607. Non-payment — Sale.— The bearer of only the certificate of deposit may pay the debt secured by the bond, even before its maturity; if he cannot agree with the holder of the bond, he may deposit the principal and interest secured by it with the warehouse until its maturity, such deposit is binding upon the warehouse and frees the goods. The

bearer of only the bond must protest it if not paid at maturity, in the same manner as a bill of exchange, and within eight days require in writing of the warehouse to sell the goods; such sale, unless otherwise agreed in writing between the holders of the certificate and bond, will be by public auction held after fifteen days' notice in the warehouse on a day fixed by the holder of the bond in accordance with the by-laws. The proceeds of the sale, after payment of all warehouse and other charges shall be applied to the debt secured by the bond, and any balance will be paid to the holder of the certificate of deposit. Only in the event that the proceeds of sale are insufficient to pay the indebtedness, can the holder of the bond have an action against the prior endorsers, as jointly liable for any unpaid part of the debt secured. If the goods stored are covered by fire insurance, the holders of the certificate and bond, have the same rights, in case of loss, upon the insurance money as they had in the goods insured. Warehouses may, in accordance with their by-laws, acquire the bonds and exercise all the rights incident thereto, in which event protest and demand of sale are unnecessary, but they must observe the eight day requirement above limited. The holder of the bond may accept or refuse payment in installments. (Arts. 347-351, 353-354.)

Art. 608. Division of Certificates — Loss.— The holder of both the certificate and bond may require the goods deposited to be divided at his expense into separate lots, and a corresponding certificate and bond to be issued to him for each lot upon surrender of the originals. If a certificate or bond becomes lost, the judge may order a duplicate issued by the warehouse, upon being satisfied that the original is lost and that the petitioner is the owner of it, and requiring a sufficient bond to be given. (Arts. 352, 356.)

TITLE VII.

MERCANTILE PLEDGES.¹

CHAPTER 1.

GENERAL RULES.

Art. 609. Defined — Incidents.

Art. 609. Defined — Incidents.— A pledge given to secure a commercial transaction is mercantile, and any pledge made by a merchant is presumed mercantile unless the contrary is declared at the time or proved. Any personal property, corporeal or incorporeal, may be the subject of the pledge; it must be created with the same formalities required for the contract secured by it, and must be actually or constructively delivered to the pledgee, and is only valid as against third persons while in his possession; under no circumstances can it be left with the pledgor or in any place belonging to him. The rights and obligations arising from the contract of pledge are indivisible.

The pledge is liable for the debt, interest and costs of its keeping; but it cannot be sold to satisfy the same until eight days after the debt becomes due, during which time the debtor may pay it. The pledge must be appraised and sold by two brokers, or where there are none, by two merchants with open houses in the place, one selected by each party, and a third by the other two in case of disagreement, or by the judge in default of the others. The pledgee cannot acquire the pledge without the express consent of the debtor given in writing after the debt becomes due.

Pledges arising from contracts of deposit in general warehouses are governed by the law on that subject. (Arts. 605–615.)

¹ See Civil Law of Pledges, Arts. 402–404.

BOOK VII.

CORPORATIONS AND PARTNERSHIPS.

TITLE I.

COMMERCIAL COMPANIES.¹ (*Sociedades.*)

CHAPTER 1.

CLASSES AND FORMATION OF COMPANIES.

(*Código de Comercio*, Arts. 89–272.)

Art. 610. Different Kinds.

611. Legal Personality.

Art. 610. Different Kinds.—The law recognizes five forms or kinds of mercantile societies or companies:

I. The “*Sociedad en Nombre Colectivo*,” or ordinary partnership with collective name;

II. The “*Sociedad en Comandita Simple*,” or limited partnership with special or silent partners;

III. The “*Sociedad Anónima*,” the “anonymous society,” or ordinary stock corporation;

IV. The “*Sociedad en Comandita por Acciones*,” or partnership with special partners, by shares; the “joint stock company.”

V. The “*Sociedad Cooperativa*,” or Cooperative Society.

Civil societies may also, without losing their character, become commercial societies upon complying with the terms of this Title. The law also recognizes, besides the above companies properly so called, momentary commercial associations for profit-sharing, which however do not have a

¹ See special chapters on corporations, chaps. 1 and 2 of Appendix, *post*, pp. 956–972.

distinct personality apart from that of their members; such associations do not require any kind of external formality for their formation or alteration; their existence may be proven by any means of proof admissible in law. (Arts. 89, 91-92, 98.)

Art. 611. Legal Personality.—The five forms of companies above named have a “juridical personality” distinct from that of their members. Final judgment against a collective partnership has the effect of *res adjudicata* against its individual members. (Arts. 90, 124.)

CHAPTER 2.

THE FORMATION OF COMPANIES.

Art. 612. Formalities — Registry.

613. Articles of Association — Contents.

Art. 612. Formalities — Registry.—Every contract for the formation of any kind of commercial company (*contrato de sociedad*) must be by “*escritura pública*,” under any other form the contract between the parties (*socios*) is invalid. Any change or amendment of the articles must be executed with the same formalities as the original contract. The omission of any of the requirements of the following Article is ground for annulling the social compact at the instance of any of the parties thereto; but the want of an *escritura pública*, or any such omissions, cannot be pleaded as a defense against a third person who has contracted with the company. Temporary associations and partnerships, and any changes therein, are not required to observe any external formalities, and their existence may be proven by any lawful means of proof. Commercial Associations are *not*¹ subject to inscription in the Public Commercial Register. (Arts. 93-94, 96-99.)

¹ This “*not*” is evidently an error in the original text. All commercial companies must be registered. See Arts. 953-954 and pp. 969-970, 980.

Art. 613. Contents of Articles.—The *escritura pública* containing the articles of association must contain:

I. The names, surnames and domicile of the parties;

II. The firm or corporate name, and the kind of company which is formed, stating its domicile;

III. The object and duration of the company, and the manner of computing its duration;

IV. The capital of the company, specifying the nature, number and value of the shares into which it is divided; the value and amount subscribed, in the case of stock corporations (*sociedades anónimas*) and special partnerships by shares (*sociedades en comandita por acciones*), or, in all kinds of companies, a statement of what each member brings into the company, either in industry, cash, credits or effects, showing the value put upon each contribution;

V. The names of the members who are to have charge of the management of the company and the use of the firm name, in the case of partnerships with collective names or with special partners (*sociedades en nombre colectivo* or *en comandita simple*); or in the case of other kinds, the manner in which the company is to be managed and administered, specifying the powers of the directors or managers;

VI. The amount of the reserve fund in stock companies, except co-operative societies;

VII. The manner and form of sharing the profits and losses among the members of the company;

VIII. The share (*participación*) which the founders of anonymous corporations and companies *en comandita por acciones* reserve to themselves in the profits, and the form in which they are to receive them;

IX. The cases in which the company may be dissolved before the time fixed;

X. The bases upon which the liquidation of the company may be effected, and the manner of selecting the liquidators, when they have not been previously designated. (Art. 95.)

CHAPTER 3.

PARTNERSHIPS WITH COLLECTIVE NAME.

*(Sociedades en Nombre Colectivo.)***Art. 614. Defined — Firm Name.**

615. Rights and Duties of Partners.

616. Same — Managing Partners.

617. Rescission of Partnership.

618. Dissolution of Partnership.

619. Liquidation of Partnership.

620. Duties of Liquidators.

621. Profits and Losses — Distribution.

622. Same — Rules for Distribution.

623. Actions by Creditors — Prescription.

Art. 614. Defined — Firm Name.— The partnership with collective name is that which has a firm-name (*razón social*), and in which all the members are jointly liable without limit for all the liabilities incurred under the firm-name; any limitation contained in the articles of partnership cannot affect third persons. Only the names of the partners may appear in the firm-name; if all are not stated, the words “and company” or similar words must be used to indicate such fact. When the rights and liabilities of a partnership have been transferred to others who wish to continue the use of the same firm name, the word “*Sucesores*” must be added to it. If the name of anyone not a partner appears in the firm-name, he is liable for all its obligations, besides incurring any criminal liability. The firm name can only be used by the partner or partners authorized in the articles; if used by one without such authority, the firm is not bound, although the contract is executed in the firm-name; the partner so misusing it is civilly and criminally liable for his acts. (Arts. 100–105.)

Art. 615. Rights and Duties of Partners.— Partners cannot transfer their rights, nor can new partners be admitted,

without the previous consent of all the others; but industrial partners can in no case make such transfer.

If a partner wishes to transfer all or any part of his interest, the others have the right *del tanteo* or preferential purchase, during fifteen days after having notice; if several partners wish to exercise this right they may do so in proportion to their interests.

The partners are bound to contribute to the joint capital the amounts they have agreed, and to warrant (*evicción y saneamiento*) the property which they may bring in as part of their contribution; each partner being bound to give, or to do, or both, according to his contract; and the entries in the firm books are proof of his having complied, although the managing partners may satisfy themselves by other proofs. Any delay by a partner to contribute his part renders the contract subject to rescission, or the firm may enforce the payment with interest and any other damages suffered. Industrial partners cannot engage in any other business on their own account or for others, unless expressly permitted by the firm; should they do so, the firm may exclude them and deprive them of all rights in the business, or may appropriate any profits derived from their outside transactions. (Arts. 106–112.)

Art. 616. Same — Managing Partners.— The management (*administración*) of the firm may be confided by the articles to one or more partners; such appointment can only be revoked by consent of all the partners, except by decree of court for fraud, negligence or inability; the *administrador* is bound to serve as long as the partnership exists, and is liable to it for damages caused by neglect of the firm's affairs entrusted to him. Where administrators are appointed, the other partners cannot interfere with their acts; but if there are no administrators, all the partners may take part in the management of the business, all those who are present being required to agree upon every contract or obligation affecting

the partnership. Contracts entered into by the majority of the administrators, without the knowledge or against the express will of the minority, are valid, but those making them are liable to the partnership for all damages occasioned.

The majority of the partners may appoint an "interventor" to the managing partners, and the court may do the same in proceedings for the removal of the administrators. The managing partners have all the powers necessary to the conduct of the business, but cannot sell or mortgage the firm's real property unless expressly authorized; should they exceed their powers, or use the firm name for their personal business, or engage in commerce on their personal account, they are liable for all losses and damages which they occasion, besides such criminal responsibility as they may incur. They are bound to render accounts at any time requested by the majority of the partners, although at times not specified in the articles.

The duties of the managing partners cannot be delegated without express authority, but they may upon their responsibility confer authority for the transaction of some of the partnership matters. All questions concerning the partnership business will be determined by the majority of votes, without infringing the rights of the partners under the articles, unless otherwise provided therein or by the law; such majority is to be computed by amount of interest, but when one partner represents the greater interest, the vote of another is also required. The articles of association can only be modified by the consent of all the partners; any of the latter have the right at any time to examine the books and accounts of the partnership, and to make such protests as he may believe for the common welfare.

Final judgments rendered against the partnership bind the several partners. (Arts. 113-124.)

Art. 617. Rescission of Partnership.—The contract of partnership in collective name may be rescinded as to one partner:

If he makes use of the firm name or capital for his personal affairs; or exercises acts of management when he is not an *administrador*; or commits any fraud or wrong against the partnership; or fails to contribute in whole or part his share of the capital; or conducts any business forbidden by law or the articles; or fails to render personal services which he should render to the partnership, except with a good excuse and for a limited time not enough to prejudice the interests of the partnership. A partner who is excluded from the firm in any of such cases is liable for his share of the losses, and the other partners may retain his share of the capital and profits until business pending at the time is finished, and must then liquidate the partnership up to that time. (Arts. 131-132.)

Art. 618. Dissolution of Partnership.— Besides the causes provided in the articles, the partnership may be dissolved: 1, By mutual consent; 2, by the expiration of the term fixed in the articles, or by the completion of the undertaking, or the expiration of the patent, which was the object of its formation; 3, upon the loss of two-thirds of the firm capital, or that of one-third if a partner so requests; 4, by the death or incapacity of an industrial partner whose industry may have given birth to the partnership, or by that of any other partner, unless in this event, the articles provide that the company continue with the heirs of the deceased member or with the survivors; 5, by the insanity or incapacity of a managing partner, if another partner demands it; 6, by the revocation of the appointment of managing partners, if another demands the dissolution; 7, by the bankruptcy, legally declared, of the partnership.

Upon the expiration of the time fixed in the articles, its tacit extension will not be presumed. Where the dissolution is demanded by a partner in any of the instances in clauses 3, 5 and 6, he cannot prevent the termination of pending business, and until such time no division of assets can be

made. In all cases of dissolution except by expiration of the time fixed in the articles, the rights of third persons are not affected until publication is made as required by the Code. In the event that it is provided that upon the death of a partner the partnership shall continue with the surviving partners, the share of the deceased partner must be liquidated and delivered to his administrator. Upon any dissolution of such partnership, the liquidation shall begin immediately and be concluded within six months, unless otherwise provided; and the words "*en liquidación*" shall be added to the firm name. (Arts. 133–138.)

Art. 619. Liquidation of Partnership.—The liquidators may be named in the original articles, or upon the dissolution of the partnership as contemplated in the foregoing Article; the charge is personal unless otherwise provided. If named in the articles, they can only be removed for good cause arising upon the unanimous vote of all the partners, or by judicial decree in case of disagreement among them; and if the place becomes vacant by death, incapacity or other cause, it shall be filled by unanimous vote of the partners. Immediately that liquidators are appointed or enter upon their duties, the powers of the administrators cease and any further obligations contracted by them are void. (Arts. 139–141.)

Art. 620. Duties of Liquidators.—Besides such instructions as may be given to the liquidators in the articles, they are under the further duty: 1, To make an inventory of all the assets and property, real and personal, of the partnership; 2, to require accounting from the managing partners and all who have taken part in the conduct of the business, even where the managing partners are themselves appointed liquidators; 3, to present monthly statements of the progress of the liquidation, which are subject to be verified by the partners by comparing them with the books; 4, to keep the

books prescribed by law; 5, to collect everything due the firm and pay what it owes; 6, to liquidate the personal account of each partner; 7, to divide among the partners, if they prefer, the personal and real property and assets of the partnership, according to the rules provided for distribution, or sell them and divide the proceeds; 8, to neither compromise nor incur obligations in respect to the partnership interests beyond the terms of the articles unless expressly authorized. They are liable to the partners for any damages occasioned by fraud or negligence in the discharge of their duties; and the partners have the right to keep themselves informed of the progress of the liquidation and to inspect all documents relating to it at the place where it is being conducted; if minors are interested, they are to be represented by their guardians or curators. The books and documents of the partnership must be preserved by the liquidators until the end of the liquidation, and afterwards by the late managing partners for ten years. (Arts. 142-143, 147-149.)

Art. 621. Profits and Losses — Distribution.— Upon the termination of the partnership a general balance will be taken to determine the profits and losses, computing as simple advances any amounts received by the partners, except those received by industrial partners by way of maintenance (*alimentos*). The following rules will be observed for the sharing of losses and profits: 1, Any express agreement about the division will be strictly observed; 2, if the share of each in the profits only has been stipulated, the same rule will apply to the losses, and *vice versa*; 3, if no express agreement exists, the profits and losses will be divided in proportion to the investment of each; 4, in default of agreement in regard to division of profits, an industrial partner will receive the same share as the least of the capitalist partners; if there are several industrial partners, they will divide among themselves equally one-half of the profits, but

in no case are they liable for losses unless otherwise agreed.

A partner who does not make objection to the distribution within sixty days after notice of it or after the cessation of any legal impediment he was under within that time, is held to approve it. Any provision in a contract of partnership which excludes any partner from sharing in the profits, or deprives his heirs of the right to require accounts and to receive his share of capital and profits, is void; but neither capital nor profits can be distributed until after dissolution and liquidation of the company, unless otherwise provided in the contract. (Arts. 125-130.)

Art. 622. Same — Rules for Distribution.—No partner may require of the liquidator the payment in full of his distributive share, but only such partial payment as is compatible with the interests of firm creditors, until their debts are paid off, or the amount is deposited in case payment cannot then be made; but such partial payments are discretionary with the liquidators or with the partners, a meeting of whom may be called for the purpose by any member.

When all the debts of the company are paid, the liquidator will distribute the remainder among the partners, in accordance with the provisions of the articles, or if there are no express provisions, in accordance with the following rules: 1, If the assets are of easy division they will be divided among the partners in proportion to the share of each; 2, if they consist of different kinds of property, they will be divided into lots containing as nearly as possible equal values, any difference being made up by payment to the one receiving a smaller lot by the one receiving the larger; 3, when the lots are made up, if the partners are satisfied, or if not, after the eight days allowed for equalization, the liquidators will distribute them by drawings held in the presence of the partners, and will immediately make a record in writing which will be signed by all; 4, if the liquidation is made because of the death of a partner, the division or sale of the

real estate will be made as prescribed in the Code of Commerce, although some of the heirs are minors. In all cases the partners are entitled to eight days after notice or after removal of disability, as stated in the preceding Article, in which to ask any modifications of the shares if they believe their rights prejudiced. (Arts. 144-146.)

Art. 623. Actions by Creditors — Prescription.— Any action by the partners to recover from the company the amounts due them will be brought against the liquidators, and the latter may sue the partners to recover any overpayments they may have received. If the liquidators are sued by creditors of the company, they are only bound to pay with the funds of the partnership, and if the funds are not sufficient to satisfy their claims, the creditors may sue any one or more partners for the balance. Individual creditors of a partner have no right, in respect to the partnership, except to embargo the interest of the debtor partner in the capital and profits, and to receive the same in the same form and time as he would have received it; if such creditor's claim was prior to the formation of the partnership, he may attach and enforce the immediate liquidation and payment of the debtor partner's interest; if the debtor partner dies, his personal creditors may ask the liquidation of the partnership unless the articles provide that it is to continue with the heirs of the deceased partner. The several liability of the partners prescribes in five years after the publication of the firm's liquidation. (Arts. 150-153.)

CHAPTER 4.

LIMITED PARTNERSHIPS. (COMANDITA SIMPLE.)

Art. 624. Nature and Organization.

625. Rights of Partners — Administration.

626. Same — Distribution.

Art. 624. Nature and Organization.—The *Sociedad en Comandita Simple*, or limited partnership, is composed of one or more active partners (*socios comanditados*), who are severally and unlimitedly liable for the partnership obligations, with one or more silent partners (*socios comanditarios*), who are not liable for the debts and losses except to the extent of the capital which they agree to contribute to the partnership. The firm name (*razón social*) necessarily contains the name or business style of one or more of the active partners, but cannot contain that of the silent partners; if the names of all the active partners do not appear in the firm name, the words “and company” or similar words must be affixed, and the words “*sociedad en comandita*” must always be added. (Arts. 154–155.)

Art 625. Rights of Partners — Administration.—The silent partners cannot exercise any act of administration, even as *apoderados* of the administrators, but they may give advice and authorization and exercise vigilance, as provided in the articles, and are severally liable to third persons for all acts in which they take part in contravention of this prohibition, and even for acts in which they took no part, if they have habitually taken part in the administration or allowed the use of their names in the firm name; but in case of the death or disability of the administrator, if no provision is made in the articles for replacing him, and if there is no active member, a silent partner may do urgent acts or those of mere administration during one month after such death or disability, and is only liable in such cases for the way in which he discharges his duty. The silent partners cannot examine into the state of the business except at the times stipulated in the articles, but may at any time inspect the books and papers of the partnership, which will be ordered by the court at the instance of any one of them. (Arts. 156–159.)

Art. 626. Same — Distribution.— The silent partners can under no pretext receive a share in anything but the net profits ascertained as prescribed in the articles; the administrators are personally and severally liable for every distribution made without previous inventory of profits, in excess of the profits, or under an inventory made fraudulently or with gross fault. Neither the silent nor active partners can be required to return amounts which they have received from the profits according to the articles; the active partners alone are liable for the debts of the company, as well during the course of its business as at its dissolution. All the provisions in regard to “collective partnerships” are applicable to limited partnerships, except as herein prescribed in respect to silent partners. (Arts. 160–162.)

CHAPTER 5.

CORPORATIONS. (SOCIEDAD ANÓNIMA.)

Art. 627. Defined — Character.

628. How Organized.

629. First Form — Public Subscription.

630. Second Form — “Escritura Pública.”

631. Shares of Stock.

632. Stock Register — Transfers.

633. Rights of Corporation as regards Stock.

634. Board of Directors.

635. Managers — Comisarios.

636. Stockholders’ Meetings.

637. How Called and Constituted.

638. Voting — Number Required.

639. Proxies — Minutes.

640. Dividends — Reserve Fund.

641. Annual Statement — Publication.

642. Dissolution — Liquidators.

643. Final Balance — Distribution.

644. Books — Preservation.

Art. 627. Defined — Character. — The “*Sociedad Anónima*” is the ordinary form of stock corporation; it is called

“anonymous” because it has no “firm name” (*razón social*), and is only designated by the name of the kind of business for which it is organized; such name must be different from that of any other corporation. The stockholders are only liable to the extent of their stock; but if any member lets his name appear in the company’s name he becomes personally and severally liable for its obligations; whenever the company-name is used the words “*Sociedad Anónima*” (abbreviated “S. A.”) must be added. (Arts. 163–165.)

Art. 628. How Organized.—The “*Sociedad Anónima*” may be organized in two ways, either by public subscription, or by two or more persons appearing before a Notary and signing the corporate articles (*escritura social*) which must contain all provisions requisite to its validity. (Art. 166.)

Art 629. First Form — Public Subscription.—Where the corporation is organized by public subscription, it is necessary that its program be published; that its capital be subscribed; that a stockholders’ meeting be held to approve and ratify its constitution; that the minutes of the meeting and the by-laws (*estatutos*) must be protocolized.

The program, drawn up and signed by the founders, must contain the draft of by-laws in full, with any necessary explanations, and the calls which will be required for the capital, besides the proof of the value put upon any property which any member may contribute to the company. The by-laws (*estatutos*) must contain all the requisites of articles of association as prescribed in Art. 613, besides the manner of calling and holding the first stockholders’ meeting. The stock subscription must be collected on one or more copies of the program, and must state the names or firm-names and domiciles of the subscribers, the number, written out in full, of shares subscribed, the date of subscription, and the declaration that the subscribers know and accept the proposed by-laws, the whole certified by two witnesses.

The capital must be fully subscribed, and the ten per cent. which must be in cash must be exhibited in ready money; if any part of the capital consists in real or personal property or effects turned in, it must be fully represented by shares issued; if the ten per cent. of the value of the stock to be paid for in money is not paid in within the time fixed, the shares will be considered as not subscribed.

The amount of calls paid in by the subscribers will be paid by them into the bank or business house designated in the program, to be delivered to the administrators appointed by the first stockholders' meeting, after the protocolization and registration of the corporate documents, or will be returned to the subscribers if the company is not organized. When the capital is subscribed and paid in as above provided, the stockholders' meeting will be held, for the purpose of verifying and approving the calls made by the founders and the value put upon property turned in by any subscribers, who shall not have a right to vote on the matter; to discuss and approve the by-laws; to determine upon the share which the founders are to have in the profits, and to appoint the administrators and *comisarios* who are to serve during the time fixed in the by-laws. A list showing the number of shares and of votes which each stockholder represents, and signed by all present, must form a part of the record of the meeting. After the meeting and the making up of the minutes, these and the by-laws must be protocolized and registered. (Arts. 167-174.)

Art. 630. Second Form — "Escritura Pública."— Where the corporation is not formed by public subscription, it is sufficient for those organizing it to execute an "*escritura pública*," containing the requirements stated in Art. 613 in regard to articles of association, and those stated in the preceding Article in regard to subscription of all the capital and the payment in cash of ten per cent. of it, and a recital of the verification of the value put on any property contributed by

any stockholder, as above provided. The by-laws must be adopted by the first stockholders' meeting (*Asamblea general*), which will be held as provided in the articles.

Every act done by the founders of a corporation, except those necessary to organize it, will be void unless approved by the stockholders' meetings. (Arts. 175-176.)

Art. 631. Shares of Stock.—Sales or transfers of stock made by the subscribers or founders of a corporation before it is legally organized, are void.

The capital stock of anonymous societies is divided into shares of equal value which confer equal rights on their owners, unless otherwise provided when the corporation is organized. The stock certificates may be either “nominative,” i. e., to a named stockholder, or to bearer, and they must express: The name and place of domicile of the corporation; the date of its organization; the amount of the capital, and amounts paid in by the stockholder, and the total number of shares into which it is divided; the duration of the corporation; the rights granted to the shares in the articles or in the by-laws. The certificates must be signed by the number of administrators provided in the by-laws. Each share is indivisible; if several own one share they must appoint a common representative, or it will be done by the judge if they cannot agree. (Arts. 177-179, 182.)

Art. 632. Stock Register — Transfers.—Anonymous corporations must keep a register of “nominative” stock, which shall contain: The name of each stockholder and the number of his shares; the amount which he has paid in; all transfers of stock, with their dates, or the conversion of “nominative” shares to those to bearer, where permitted by the by-laws; a statement of the shares deposited as guarantee by administrators, directors and *comisarios*. The ownership of nominative shares is proven by the entries in the register;

their transfer is effected by an entry made in the register, dated and signed by the assignor and assignee or their authorized attorneys, certified copies of which entry may be issued to those who wish it. The transfer of shares issued "to bearer" is effected by the simple delivery of the certificate. (Arts. 180-181.)

Art. 633. Rights of Corporation as Regards Stock.—The corporation may sell the shares of stockholders to enforce unpaid subscriptions or calls, subject to the by-laws, and it has a lien on all dividends for the same purpose. A corporation cannot buy its own shares, except: When authorized by the stockholders, or by an existing authorization in the by-laws, and with funds not belonging to the reserve fund; and when bought with corporate funds, by observing all the formalities prescribed for the reduction of the capital. The shares bought under the former circumstances cannot be voted or counted in the stockholders' meetings; the latter shall be cancelled. Other purchases are not void, unless the seller acted in bad faith; but the officers authorizing them are liable for "*daños y perjuicios*," besides any criminal liability. In no event can a corporation make loans or advances upon its own stock. (Arts. 183-186.)

Art. 634. Board of Directors.—The administration of a corporation is temporary and revocable, the members exercising it being regarded as trustees (*mandatarios*); the powers shall be conferred upon a Board of Directors and one or more managers; a consulting board may also be appointed outside the domicile, vested with such powers as the by-laws may provide. Unless otherwise provided in the by-laws, the board of directors has the amplest powers to do all acts necessary and proper to carry out the objects of the corporation. The directors are elected by the general meeting of stockholders, although the first board may be named in the articles of incorporation; they are eligible to reëlection unless

otherwise provided; the charge is personal and cannot be delegated. Vacancies in the board may be filled as the by-laws provide. Each director must deposit with the corporation during his term, a certain number of shares, to be specified in the by-laws, as a guarantee of his conduct. Directors do not incur any personal liability in the matters which they conduct in the name of the corporation; but they are liable to it for the discharge of their duties and for faults in their management; such liability can only be enforced by the general stockholders' meeting or its authorized representative. If a director has an interest in any matter requiring his action conflicting with those of the corporation, he must declare it formally in writing to the corporation. (Arts. 187-196.)

Art. 635. Managers — Comisarios.— The conduct of the corporate business and its representation in all its affairs shall be conferred upon one or more general directors or managers, as above provided, whose appointment, removal and powers shall be determined in the by-laws; their responsibility as agents is governed by the rules of the common law.

The superintendence of corporations must be conferred upon one or more members called *comisarios*, who must deposit such number of shares as the by-laws require upon assuming their functions; they are elected by the stockholders' meeting, but the first ones may be named in the articles; they are re-eligible and removable notwithstanding any provision to the contrary; vacancies may be filled as provided in the by-laws, but always upon nomination by the stockholders.

The *comisarios* have unlimited right of superintendence (*vigilancia*) over all the affairs of the corporation, and may at any time inspect its books, correspondence and documents of all kinds; for which reason the stockholders cannot make such inspection themselves. Each year the managers shall submit the general balance to the *comisarios* to be audited,

and they shall submit their report to the general meeting of stockholders, with such recommendations as they deem advisable. The responsibility of *comisarios* is similar to that of directors. (Arts. 197-200.)

Art. 636. Stockholders' Meetings.— The General Assembly of stockholders has the amplest powers to carry out and to ratify all the acts of the corporation, and may, unless otherwise provided, amend the by-laws.

The Assemblies (meetings) are ordinary and extraordinary; the former must be held once a year, upon the close of the corporate business, and shall be devoted to: The discussion, approval or modification of the general balance upon hearing the report of the *comisarios*; the election of the board of directors and *comisarios* to serve, and fixing their salaries, if not fixed in the by-laws, and all other matters stated in the call. The extraordinary meetings may be held whenever called according to the by-laws, and they must be called by the board of directors, upon at least a month's notice, when a written request for its call specifying the questions to be submitted to the assembly, is made by a number of stockholders representing one-third of the capital stock. (Arts. 201-202, 209.)

Art. 637. How Called and Constituted.— The general assemblies must be called by the publication of a notice in the official paper of the State, District or Territory in which the corporation has its domicile, which notice must contain the "order of the day" or list of all matters to be submitted to the assembly; every resolution taken in disregard of this provision is void. The call must be made by the board of directors or the *comisarios*, and in order to be legal more than one-half of the capital stock must be represented in the meeting; the number of votes to which the stockholders are entitled and the manner of computing them, are to be determined in the by-laws. If the meeting cannot be held on

the day for which it is called, the call must be repeated, and the second meeting may pass on all matters mentioned in the call regardless of the amount of stock represented by the stockholders present. (Arts. 203-204.)

Art. 638. Voting — Number Required.— A vote of at least a majority of all the shares present is required to adopt any action; and unless otherwise provided in the articles or by-laws, three-fourths of the capital stock must be represented, and the unanimous vote of the stockholders representing one-half of said capital is required: to dissolve the corporation before its expiration, except upon the loss of one-half the capital; to extend its duration; to consolidate with other companies; to reduce or increase the capital; to change the object of the company, or any other modification of the articles or by-laws. The extension of the corporate existence, its consolidation with other companies, or the decrease of capital must be by *escritura pública* and recorded in the Commercial Register; the increase of capital stock must be accomplished with the same formalities as are required for the organization of the corporation. (Arts. 205-208.)

Art. 639. Proxies — Minutes.— Stockholders may be represented in the meetings by proxies appointed in accordance with the by-laws; they are not required to be stockholders; but directors cannot be proxies, nor can they vote upon the approval of accounts nor upon resolutions affecting their personal responsibility. Minutes must be kept in duplicate and one copy filed as above required. (Arts. 210-212.)

Art. 640. Dividends — Reserve Fund.— Anonymous societies can only pay dividends out of the profits shown by the balance; but the articles or by-laws may provide that the stock shall receive for not longer than five years an interest not to exceed six per cent. a year, in which event the interest shall be computed among the costs of installation. Stockholders

shall never be required to return any dividends received. Not less than five per cent. of the net profits shall be set aside yearly to form a reserve fund, until this amounts to at least one-fifth of the capital, and it shall be replenished in the same way if diminished at any time. (Arts. 213-214.)

Art. 641. Annual Statement — Publication.— A balance or statement setting out the capital stock, the amount paid in and yet to be paid, cash on hand, and the several accounts making up the assets and liabilities of the company, shall be published annually in the official paper of the State, District or Territory in which the company has its domicile. (Art. 215.)

Art. 642. Dissolution — Liquidators.— A corporation is dissolved: By the consent of the stockholders voted as required in Art. 638, *supra*; by the expiration of the time for which it was formed; by the loss of one-half of the capital stock, when so voted by the stockholders in the terms above provided; by the legally declared bankruptcy of the corporation. Upon the dissolution being voted, the assembly shall appoint the liquidators, or if it fails to do so, they will be appointed by the judge upon demand; such appointment shall revoke the functions of the administrators of the company, but the latter should assist the liquidators whenever so requested; and they must present to them for their approval their accounts from the time of the last balance. Where one or more of the administrators is appointed liquidator, such accounts must be published in two or more newspapers of the company's domicile, with the final balance of the liquidation; but if the liquidation lasts beyond the current fiscal year, said accounts shall be added to the first balance presented by the liquidators to the general assembly of stockholders; and if it lasts more than a year they shall make up the annual balance as provided by law and the by-laws. (Arts. 216-221.)

Art. 643. Final Balance — Distribution.— When the liquidation is ended, the liquidators will make up their final balance, showing the amount to which each share is entitled in the distribution of assets, which balance shall be published for thirty days in one or more newspapers of the company's domicile. Within fifteen days after the last publication, stockholders may present their claims to the liquidators, which shall be determined by an assembly called for the purpose, by a majority of votes, each share having one vote. After the end of said fifteen days, when no claims have been presented or they have been passed on as above, the final balance shall be considered as approved, but the liability of the liquidators in respect of the distribution of assets remains unaffected. Any amounts due stockholders which are not collected within two months after the approbation of the balance, shall be deposited in some institution of credit, indicating the name of the stockholder, if the shares be nominative, or the number of the share if to bearer, and such sums shall be paid by said institution to the person named or to the bearer. (Arts. 222-224.)

Art. 644. Books — Preservation.— The books of the dissolved corporation shall be deposited by the liquidators in the Public Registry of Commerce and shall there be preserved. (Art. 225.)

CHAPTER 6.

PARTNERSHIPS WITH SILENT STOCKHOLDERS.

(*Sociedades en Comandita por Acciones.*)

Art. 645. Defined — Incidents.

646. "Vigilance Committee."

647. Dissolution.

Art. 645. Defined — Incidents.— The *sociedad en comandita por acciones* is that formed by one or more active part-

ners (*socios comanditados*), severally and unlimitedly liable for the firm debts, with silent stockholders (*accionistas comanditarios*) whose liability is limited to the amount of their stock. The provisions in regard to anonymous societies apply to it except as modified in this chapter; with exception of the provisions of Arts. 634 and 635 in regard to administration, and that of Art. 642 relative to dissolution upon loss of one-half of capital, which are not applicable. It has a firm name (*razón social*) which must only contain the names of the active partners; when all the names are not contained in the firm-name, the words "and company," or other equivalent words, must be added. If some particular denomination is adopted, the words "*Sociedad en Comandita por Acciones*" must be added, after it. The name of the active member or members who are to manage the business must be stated in the articles of association, their shares of stock can never be issued to bearer. (Arts. 226-230, 235, 237.)

Art. 646. "Vigilance Committee"—Duties.—Every Society under this chapter must have a "*consejo de vigilancia*," composed of at least three silent stockholders, who are to be appointed by the constitutive general assembly. Their duties are to verify the books, cash, correspondence and securities of the society; to present to the general assembly each year a report showing any irregularities in the inventories and balances, and any objections there may be to the payment of proposed dividends; such inventory, balance and report shall be ready for the stockholders in the office of the society at least a month before the meeting of the assembly. The members of the committee are only liable according to the rules of common law for the execution of their trust. (Arts. 231-234.)

Art. 647. Dissolution.—Unless otherwise provided in the by-laws, the society is dissolved by the death, incapacity or impediment of one or more of the active managing members

depriving the society of their services; in such cases, unless otherwise provided, the Vigilance Committee may appoint an administrator to perform urgent or merely administrative acts until the meeting of the assembly, which shall be called at the latest within a month from such appointment. (Art. 236.)

CHAPTER 7.

COÖPERATIVE COMPANIES.

(*Sociedades Coöperativas.*)

Art. 648. Defined — Incidents.

649. Articles of Association — Requirements.

650. Register — Membership.

651. Rights and Liabilities of Members.

Art. 648. Defined — Incidents.— A *Sociedad Coöperativa* is one which on account of its nature is composed of members whose number and capital stock are variable. Its shares are always “nominative,” and cannot be assigned except by express consent of the general assembly upon the same terms prescribed for the removal and admission of new members. The by-laws may provide that the liability of members may be several and unlimited or limited to a certain amount, less, equal to or greater than the capital stock. Coöperative companies have no firm-name (*razón social*), but must be designated by a special name, which must be different from any other; and the words “*Sociedad Coöperativa*,” together with an indication of the extent of liability of the members, must be added whenever the name is used. The Coöperative Company must be managed by one or more managing directors, whether members of the company or not, whose appointment is revocable at any time; their powers, duties and liability are the same as those of the *Consejo de Administración* of anonymous corporations, as stated in Art. 634, and they must give bond in an amount to be fixed in the

by-laws. The provisions in regard to the "*consejo de vigilancia*," in Art. 646, are applicable to these companies, as are also those relating to the convocation, powers and resolutions of the general assemblies of anonymous corporations and in regard to their dissolution; but the powers exercised in the latter by the *consejo de administración* and *comisarios* shall be exercised by the manager and *consejo de vigilancia* respectively. (Arts. 238-242, 256-259.)

Art. 649. Articles of Association — Requirements.— Besides the recitals required in the usual corporate articles, stated in Art. 613, the *escritura pública* of a coöperative company must set out: The terms of admission, removal and expulsion of members; of the payment or withdrawal of capital contributed by them, and other rights which they are to enjoy; the manner of calling assemblies, the majority required for the adoption of resolutions, and the manner of voting. In the absence of such provisions the following rules must be observed: Members may withdraw, or be expelled for violation of the contract, and new ones admitted, by the consent of the assembly; payments for stock may be made by weekly installments, and the contributions of withdrawing or expelled members, as shown by the last preceding balance, shall be repaid in the same form in which they were paid in; all members may vote in the general assemblies, the call for which shall be published in one or more newspapers having the largest circulation; an absolute majority of votes is required to adopt resolutions, provided that more than one-half the capital stock must be represented; the votes shall be *viva voce* (*económico*) unless three members ask that it be "nominal," or by ayes and noes recorded. (Arts. 243-244.)

Art. 650. Register — Membership.— Every Coöperative Society must keep a register "authorized" by its manager, which shall contain: The by-laws; the names, occupation and domicile of the members; the date of their admission, with-

drawal or expulsion; the account of the amounts paid in or withdrawn by each; the account of amounts withdrawn must be signed by the member. The admission or withdrawal of a member shall be entered in the register, with the date, and signed by him; such withdrawal can only be made during the first six months of the fiscal year. The exclusion of a member must be evidenced by a minute (*acta*) signed by the president of the assembly and the manager, setting out facts showing that the expulsion is in accordance with the by-laws, and a certified copy of the same must be sent by registered mail to the expelled member, and the expulsion entered in the register. (Arts. 245–249.)

Art. 651. Rights and Liabilities of Members.—Members withdrawing or expelled cannot require the liquidation of the company, but are entitled to repayment of the capital contributed, as provided in Art. 649, or according to the by-laws; and they remain liable, for one year, and in proportion to their interest, for all obligations pending at the time of withdrawal or expulsion. In case of the death, bankruptcy or interdiction of a member, his heirs, creditors or representatives are entitled to receive his interest as above provided. Personal creditors of a member can seize only the interest or dividends belonging to him, or the part of the capital to which he is entitled when the dissolution of the company had been decreed, except the exemption of support allowed by law.

The shares of stock of the members shall be taken from stub books, and shall bear the name of the company, name, occupation and domicile of the member, the date of his admission, and be signed by the manager of the company and by the owner. On the back of the certificates shall be recorded, in order of dates, the payments made or the amounts withdrawn by the member. (Arts. 250–254.)

CHAPTER 8.

CONSOLIDATION OF COMPANIES.

(Fusión de las Sociedades.)

Art. 652. Procedure.

Art. 652. Procedure.—The consolidation of several companies must be determined by each of them, in a general assembly in which at least three-fourths of the capital stock is represented, and by the unanimous vote of stockholders representing one-half of said capital, as provided in Art. 638, but the company shall stand as dissolved for those stockholders who dissent. Each of the companies agreeing to consolidate must make the publication required by Art. 569 in cases of liquidation, and publish its last balance; those which will cease to exist must also publish the plan adopted for the settlement of their liabilities. The consolidation cannot take effect until three months after the publication, unless the payment of all indebtedness is provided for, or its amount be deposited in an institution of credit, and the certificate of deposit is published as above, or the consent of all creditors is obtained; and debts on time shall be considered as due.

During the three months any creditor of the consolidating companies may oppose the consolidation, and the proceeding must be suspended unless the debt is paid, the deposit made or consent obtained as above mentioned. If no such opposition is made the consolidation may be carried out, and the company remaining in existence or resulting from the consolidation shall assume the rights and obligations of the extinguished companies. When a new company has resulted from the consolidation, it must be organized with the formalities required for the organization of companies of the class to which it belongs. (Arts. 260–264.)

CHAPTER 9.

FOREIGN CORPORATIONS.

(Sociedades Extranjeras.)

Art. 653. Requirements — Penalty.

Art. 653. Requirements — Penalty.—Corporations legally organized in foreign countries must, in order to establish themselves or maintain any agency or branch in the Republic, and to enjoy the rights granted by Art. 567, submit to the following requirements: 1, To the inscription and registry prescribed in Art. 956; 2, to publish annually, if a stock company, a balance showing precisely its assets and liabilities, and the names of the persons entrusted with its direction and management. Failure to comply with the foregoing requirements renders all those contracting in its name personally and severally liable for all the obligations of the company contracted in the Republic. The requirements of this Article cannot be renounced. (Arts 265–266.)

CHAPTER 10.

TEMPORARY ASSOCIATIONS.

Art. 654. Defined — Incidents.

655. Penalties.

Art. 654. Defined — Incidents.—Commercial associations are either “momentary” or “in participation.” The object of the former is to transact without a firm-name one or more commercial operations; all the parties are severally liable to third persons with whom they contract. The latter form is where two or more persons are interested in operations conducted by one or more in their own name, provided that the latter constitute a

single juridical entity; the associates not contracting are not liable to third persons. In either form the parties are associated for such objects, under such conditions and with such proportionate interests as they see fit to provide; their form is governed by Art. 612. (Arts. 268–271.)

Art. 655. Penalties.— All persons who by means of a crime violate or evade the acts (*acuerdos*) of corporate assemblies, the company agreements, or the provisions of the Code of Commerce in regard to companies, shall not only incur the penalty of their crime, but shall be civilly liable to make compensation for “*daños y perjuicios*,” and all acts consummated through the crime shall be void. (Art. 272.)

TITLE II.

CIVIL PARTNERSHIPS.

(*Código Civil*, Arts. 2219–2341.)

CHAPTER 1.

GENERAL RULES.

Art. 656. Definitions — Civil and Commercial.

657. Form and Incidents.

658. Universal Partnerships — Definitions.

659. Particular Partnerships — Incidents.

660. Rights and Obligations of Partners between Themselves.

661. Management of Partnership.

662. Obligations of Partners to Third Person.

663. Termination of Partnership.

Art. 656. Definitions — Civil and Commercial.— Partnerships may be formed in which the partners contribute either property or industry, or both, to the common enterprise, sharing the ownership of the property and its profits and losses, or only the profits and losses; their object must be lawful and be formed for the common good of the partners,

each of whom must contribute either money, property or services; those contributing money or goods are capitalist partners, the others industrial.

The partnership constitutes a "moral person" distinct from its members, and may be either debtor or creditor to them; the rights and obligations of the two are independent except where expressly provided by law. Partnerships are either civil or commercial, the latter being those formed for commercial business, and are governed by the Code of Commerce; all others are civil, and are governed by the Civil Code, but the parties may stipulate that they may also be governed by the Commercial rules. Where formed for both commercial and other business they are civil unless the parties declare them subject to the commercial rules. (Arts. 2219-2221, 2230-2234, 2236.)

Art. 657. Form and Incidents.—The partnership contract must be by *escritura pública* when its capital or object exceeds three hundred pesos, else it is void; in such event, and in all cases where a partnership is formed *de facto* which cannot legally exist, any partner may demand its liquidation and the return of what each has contributed, and the parties may be criminally liable; but where the contract may be made verbally, consent may be presumed from acts.

The partnership is void: Unless an inventory of all property contributed is made and signed by the partners, and added to the *escritura*; where the contribution of future property is stipulated (except between husband and wife), or where it is stipulated that all the profits are to belong to certain partners and all the losses to others. The contract cannot be modified except by unanimous consent. Partnerships are universal or particular. (Arts. 2222-2229, 2235, 2237.)

Art. 658. Universal Partnerships — Definitions.—The universal partnership may be either of all present property or of all profits; the former being where the parties contribute

all their personal and real property and all the profits which may accrue therefrom; it may be extended by consent to the profits and products of future property however acquired, but cannot be extended to the ownership of future property. The universal partnership in profits only extends to what the parties may acquire by their industry and all the profits of their present or future property; where the agreement is silent as to the kind of partnership intended, it is presumed to be one of the profits; to extend to the property it must be expressly so declared. In the partnership of property the title ceases to be in the individuals and passes to the "moral person" of the partnership; in that of profits each partner retains the title of his property and all rights of action concerning it, and the control (*dominio*) of the profits and management of the property is common only when so stipulated.

The universal property partnership is liable for all debts incurred before or after the making of the contract; that of profits is liable for debts contracted on its account, and where they are incurred, before or after the contract, with reference to the property of each partner, the latter is liable for the principal of the debt and the partnership for the interest. In either form of partnership, the necessary living expenses of the partners as defined in Art. 178, will be drawn out of the common fund; and upon the dissolution of the partnership, the property remaining will be equally divided among the partners unless otherwise stipulated. (Arts. 2238-2251.)

Art. 659. Particular Partnerships — Incidents.— The particular partnership is one limited to certain and specific property or the returns from it, or to a certain and specified industry; the ownership of the property is put in common only when expressly so stipulated; otherwise only the management of the property and the profits or losses arising from it will be in common. Where the things are such as are necessarily consumed by use, their ownership is in common,

but their value at the time of coming in is considered the capital of the partner contributing it. When any real estate is held by it, the partnership must be formed by *escritura pública*.

The risk of the things owned in common is borne by the partnership, which need not restore the identical property, but where not owned in common the risk is on the owner if the partnership is not at fault. The partnership is liable for the debts incurred on its account, and the managing partner must pay them not only to the extent of his partnership interest but with his other property; the other partners are liable only to the extent of their interests. If the property brought into the partnership is not in ownership but only as to its produce, the provisions of the preceding Article as to payment of debts applies. Living expenses are not to be drawn from common funds of the particular partnership unless expressly so agreed. (Arts. 2252–2261.)

Art. 660. Rights and Obligations of Partners Between Themselves.—The partnership begins as soon as the contract is made unless otherwise agreed, and continues for the time agreed; if no agreement as to time, then for the time required for the business for which it was formed if by its nature this is of limited duration; otherwise the partnership will continue during the life of the partners unless ended as in Art. 663 provided.

The partners are debtor to the partnership for the contributions they agree to make; where this is not in money, the things contributed will be appraised to determine their value as the capital of the partner contributing them; each partner is a warrantor and must make compensation the same as a seller for any defects in the things contributed; but if the thing promised is the use of specific properties, his liability is governed by the rules between lessor and lessee; and if he fails to contribute as agreed, he is liable for the interest or income from the time the contribution should have been

made, and for losses and damages if he acted through fault or fraud; a like liability resting upon any partner who without expressed authority uses any of the partnership assets for his own uses.

Partners agreeing to contribute their services, owe to the partnership all earnings which they receive from the same. Where the managing partner receives money from anyone indebted to both him and the partnership, he must apply the amount pro rata to both debts, except where he receipted for it all in the partnership name, which is then to receive the whole payment; the foregoing is subject to the rules stated in Art. 345 as to the application of payments, but only where the debt due the partner is the more onerous; where the partner has received payment in full for his part of a firm credit, he must turn it over to the partnership if the debtor becomes insolvent. The partners are liable to the partnership for damages caused it by their fault or negligence, and cannot set off against it the profits they may have earned for it on other occasions.

The partnership is liable to the partners for any amounts expended or obligations incurred by them in good faith in its behalf, and for the risks incident to the duties discharged. Partners will share in profits or losses in proportion to their interests, unless otherwise stipulated, and if agreement is made as to shares in profits they will be the same as to losses, and vice versa. If some partner contributes only services, without any agreement as to their value or the amount he is to receive therefor, the following rules will be observed: If the services of the industrial partner could be rendered by another person, he will receive the usual salary or fees, although there are several industrials; but if they could not be done by another, he will receive the same amount as the largest capitalist partner; if there is only one industrial and one capitalist partner, the profits will be equally divided; if there are several industrials whose services cannot be rendered by others, they shall receive together one-half the

profits and will divide them among themselves by agreement or if they do not agree, by arbitral decision. If an industrial partner has also invested capital in the partnership, the capital and the services will be treated separately. If upon terminating a partnership having both capitalist and industrial partners, there are no profits, the entire capital will be returned to its owners. Where the partners agree that the partition shall be made by a third person, they are bound by the one he makes unless they agree otherwise. (Arts. 2262-2280.)

Art. 661. Management of Partnership.—The appointment of manager (*administrador*) made in the contract cannot be revoked without just cause, nor can he resign the trust without the consent of the majority; those not consenting may withdraw from the partnership; a majority vote may revoke an appointment made during the partnership. The managing partner or partners may conduct the business independently of the others unless otherwise provided; but if his powers were conferred after the formation of the partnership, they may be altered or revoked by a majority in interest, not of members; he must observe the terms upon which they were conferred, and if no terms are expressed, he is limited, like a general agent (*mandatario*) to the ordinary course of business with the capital he has received.

The managing partner must have the express written authority of the other partners, to transfer the property of the company, unless it is formed for that purpose, or to pledge, mortgage or encumber it with any other real right, and to borrow money; he is liable for violating these conditions although he has invested the proceeds to the advantage of the company; if he should do any of such acts in an urgent case where he cannot consult the other partners, he becomes as to them an “officious” agent. Where there are several managing partners, and no provision that they are to act together, each one of them may do all proper acts of manage-

ment; if it is provided that they can only act together, they cannot act otherwise without a new agreement or where irreparable injury may result.

Unless otherwise expressly agreed in regard to the administration, all partners have an equal right of management and the acts of one bind the others, who may object, however, before any such act becomes of binding effect; any one of them may make customary use of the partnership property; each one may oblige the others to contribute to the necessary expenses of the preservation of the partnership property; no one can without the consent of the others, bind or dispose of the real or personal property of the company, nor make any alterations in its real property although they may be useful.

All questions between the partners will be settled by a majority of votes; if this cannot be had, those representing the greater interest, unless it be only one person, will decide; where a majority is not obtained by either plan, the differences will be settled by an arbiter.

Where the partnership is by shares, each partner may sell all or any part of his stock, but the other partners as a whole, and each one separately, has the preferential right (*derecho del tanto*) for fifteen days after notice by the selling partner, to buy the stock, and if several wish to buy, they may do so in proportion to their interests. (Arts. 2281-2299.)

Art. 662. Obligations of Partners to Third Persons.— Third persons are not affected by changes in the management during the partnership unless noted in the original *escritura* and in the protocol. Where the articles designate who is to be *administrador*, only he can use the firm's signature, and the company is not bound by his contract unless he used in it the firm signature, unless he proves that the contract has inured in favor of the company. The partners are not severally liable for the firm debts unless so stipulated, but are liable in proportion to their interest both to creditors

and among themselves; the firm creditors are preferred to those of the individual partners in the firm assets; the latter's creditors may ask the separation of his property as provided in Art. 723, and may have execution and levy attachment of it; in this event the partnership stands dissolved, and the partner so proceeded against is liable for the losses and damages caused to the others by the premature dissolution. (Arts. 2300-2306.)

Art. 663. Termination of Partnership.—The contract of partnership is without effect if any partner fails to contribute his part within the time agreed. The partnership is terminated: 1, By the expiration of the time for which it was created; 2, when the property or the business which was its object is terminated; 3, by the death or insolvency of any of the partners; 4, by the resignation of any of the partners, notified to the others, and which is neither wrongful nor inopportune; 5, by the withdrawal of the managing partner, where he was appointed in the contract of partnership.

Such resignation is in bad faith where the partner does it with the intention of profiting alone by the benefits which should be shared by all the partners, and it is inopportune when the assets are not in good condition and the partnership will be prejudiced by the withdrawal at that time. Dissolution by resignation can only take place where the duration of the partnership is unlimited; those of limited duration can only be dissolved for legal cause, such as incapacity of one of the partners for the business, failure to fulfill his obligations, or others like which result in irreparable injury to the partnership. Where it is provided that the partnership may continue with the heirs of a deceased partner or with the remaining ones, it is not terminated by the death of a partner; if it continues with only the survivors, the heirs of the deceased are entitled to the capital and profits belonging to him at the time of his death, and thereafter are only

entitled to share in such as necessarily depend upon rights acquired or obligations entered into by the deceased.

Partition among partners is governed by the same rules as partition among heirs. (Arts. 2307-2316.)

TITLE III.

CHAPTER 1.

RURAL OR FARMING PARTNERSHIPS. (APARCERÍA RURAL.)

Art. 664. Cropping on Shares.

665. Stock-raising Partnerships.

Art. 664. Cropping on Shares.—Rural partnerships are for farming or stock-raising.

The cropping partnership is where one person lets lands to another to be cultivated, receiving such part of the produce as they may agree or the custom of the place determine. Farmers working lands on shares cannot in general harvest the crops of which they are to have part, without giving notice to the owner or his representative, if he is in the place or within the jurisdiction where the lands are; if he is not, the cropper may have the produce measured, counted or weighed in the presence of unexceptionable witnesses; if he fails to do so, he must pay double what he owes, the produce being appraised by experts named by both parties. If he leaves the land uncultivated or does not cultivate it at least in the usual way, he is liable for the losses and damages resulting. If either party dies, the contract terminates unless it is continued by consent; if at the death of the owner the farmer had begun the work of cultivation, the contract will continue for that year unless rescinded by consent. The rules governing lessor and lessee apply to croppers. (Arts. 2317-2325.)

Art. 665. Stock-raising Partnerships.—Stock-raising part-

nerships are where one person gives certain animals to another to be tended, the profits to be shared in a certain proportion, upon such terms and for such time as the parties agree, or if not agreed upon, by the general custom of the place, except as herein provided. The keeper (*mediero*) must use the same care in treating the stock as he uses with his own; the owner must guarantee the keeper in the possession and use of the cattle, and in case of eviction must supply others, both partners being liable for damages resulting from failure to perform the contract, and the owner may rescind the contract. If the animals die accidentally, the loss is on the owner, but the keeper must account to him for any profits from the carcasses; any agreement that the keeper is to suffer such losses is void. Neither partner can dispose of any cattle without the other's consent, nor can the keeper shear sheep without notice to the owner, and if he does so he must pay double the latter's share, to be appraised by experts.

Creditors of either partner can only attach the debtor's interest in the joint property; if the keeper wrongfully sells the cattle, the owner may replevin it, unless it has been sold at public auction, but he may recover damages against the keeper for failure to notify him; both have the *derecho del tanto* in respect to any cattle sold during the partnership. If the owner does not demand his part of the profits within sixty days after the expiration of the contract it will be taken as extended for another year. (Arts. 2326-2341.)

BOOK VIII.

COMMERCIAL INSTRUMENTS.

TITLE I.

THE CONTRACT AND BILLS OF EXCHANGE.

CHAPTER 1.

FORM, TERMS AND MATURITY OF BILL.

- Art. 666.** Form and Contents
667. Requisites and Incidents.
668. Time and Maturity.
669. Funds for Payment.
670. Endorsement — Requirements.

Art. 666. Form and Contents.— A bill of exchange must be drawn in one place on another, and presupposes a contract of exchange; the bill, together with all the rights, obligations and incidents arising from it are commercial.

The obligatory requisites of a bill of exchange are: 1, The date, including the place, day, month and year it is drawn; 2, the amount to be paid, which must be written in words and not simply in figures; 3, the name or firm-name of the drawee; 4, the time of maturity; 5, the place of payment; 6, to whose order the bill is payable, stating his name or firm name; the words “to the order of” being understood in all bills of exchange if not expressed; 7, the nature and form of the consideration received by the drawer; 8, the signature of the drawer, and if he cannot write, the bill must be executed in public instrument by a notary. (Arts. 449–453, 460, 463.)

Art. 667. Requisites and Incidents.—A bill of exchange can be drawn for money only, and must be drawn in one place upon another; it may be drawn on a business house of the drawer if located in a place other than his domicile, and may be on his *comisionista* or *dependiente*. It cannot be drawn in favor of the bearer nor of the drawee; when in favor of the drawer, it is not valid until endorsed in a place other than its place of payment; it may be paid at a place other than the domicile of the drawee. A bill of exchange cannot be conditional or its payment dependent on the death of a person; but the words “without notice” or “with previous notice” (“*sin aviso*,” or “*con previo aviso*”) are not conditions and may be expressed.

If the bill does not express that the drawer has received its value in cash, the taker will be liable for its amount in favor of the drawer, to demand it or to prove it, according to the terms of the contract of exchange; where the nature of the consideration is not expressed it will be presumed to be in cash.

A bill may be drawn on account of another, but under the responsibility of the signer. With the exception of the administrators of companies, who have such authority by virtue of their appointment, a person signing a bill of exchange in the name of another, must be authorized by a power of attorney from the person whose name they sign, and must state that fact in the signature (*antefirma*), and the takers and holders of the bill may require the production of the power of attorney.

The drawer cannot refuse to issue before its maturity such copies of the bill as the taker may request, which shall contain the recital that they are copies and be numbered in their order, and that they are not valid except in the event that the original bill or a previous copy is not paid.

If the bill of exchange lacks any of the requisites essential to the existence of the contract, the whole is void; if the defects are not of essence, the bill is void, but the rights and

obligations arising from the contract of exchange remain enforceable. (Arts. 454, 459, 461-462, 464-465, 466-468.)

Art. 668. Time and Maturity.—A bill may be drawn at sight, at a day certain, or on time; if on time, it shall state whether the time is to be counted from its date or from presentation; such time shall be computed from one date to the other; if the month of maturity has no date equivalent to that on which it is dated, it will be due on the last day of such month. The bill must be paid the day of its maturity before sundown, or the day before if the last is a holiday (Arts. 455-458.)

Art. 669. Funds for Payment.—The drawer of a bill must opportunely provide funds with the drawee at the place of payment sufficient to pay it when due; this may be by remittance of money, by credit extended by the drawee to the drawer, or unless otherwise stipulated, by debt due by the drawee to the drawer.

If the bill is drawn on another's account, the latter must provide the funds, but the drawer remains liable to the holders, and the rights between the former and the person for whom he drew are unaffected; if the bill is not accepted or paid, the drawer is civilly liable for the results to the holders, and where the bill is drawn upon another's account, the latter is likewise liable to the drawer; in the latter instance, if the drawee pays the bill although funds have not been provided, he may recover against the person on whose account it was drawn.

If the bill is not presented or not duly protested, the drawer is released upon showing that he had provided funds for its payment at maturity, and the liability for reimbursement falls upon the party shown to be in default. The title to the funds provided is in the holder from the moment the bill is accepted, except in case of bankruptcy, as provided in the Code, or of fraud. (Arts. 469-476.)

Art. 670. Endorsement — Requirements.— Title to bills of exchange passes by endorsement, which to be regular must be dated, must state the nature of the consideration for the transfer, the name of the person to whose order it is made, and it must be written upon the bill, or a copy of it, or upon paper attached to the bill or copy. The endorsement may be made in blank, with only the signature of the endorser; but the rights arising therefrom cannot be enforced unless it is filled in with all the requisites of a regular endorsement. Bills may be endorsed before and after presentation and before and after maturity, but “prejudiced bills” (not presented and protested) are not endorsable.

All endorsers, signers or acceptors of a bill are severally liable to the bearer as guarantors of it. The actual dates must not be altered; anyone making such alteration is civilly liable for all “*daños y perjuicios*” thereby caused; the party alleging such alteration must prove it. If the endorsement lacks any of the requisites of regularity, it will only give rise to such rights and obligations as grow out of the contract between the parties. (Arts. 477–483.)

CHAPTER 2.

PRESENTATION AND ACCEPTANCE OF BILLS.

Art. 671. Presentation.

672. Acceptance — Incidents.

673. Dishonor — Disabilities.

674. Guaranty of Bills.

Art. 671. Presentation — When Necessary.— Presentation of bills of exchange payable in Mexico and drawn at sight or at a time computable after sight, is necessary; if payable on a day certain or at a certain time after date, presentation is optional. Bills payable in Mexican territory, where presentation is necessary, must be presented within the follow-

ing times counted from their date: 1, Within two months if drawn at any place in Mexico; 2, within three months if drawn at any place in the United States of America or Europe; 3, within four months if drawn in any other place.

If the holder fails to present it for acceptance, in cases where presentation is necessary, or fails to collect it on the day it is due, or if not accepted or paid fails to protest it on the following business (*útil*) day, he loses his rights as against the endorsers, and also against the drawer if the latter proves that he had duly provided funds for its payment. (Arts. 484-485, 492.)

Art. 672. Acceptance — Incidents.— Upon the presentation of a bill for acceptance, the drawee must accept or refuse to accept it on the day it is presented, stating his reasons for non-acceptance if he wishes. The requisites to acceptance of a bill are: 1, The words "*Accepto*" or "*Acceptamos*" ("I accept" or "We accept"), or similar words clearly indicating acceptance; 2, the place and date of acceptance; 3, the signature of the acceptor, or of some one duly empowered to sign for him. If it is to be paid in a place other than the acceptor's residence, the acceptance will state the place of payment. A bill cannot be accepted conditionally, but may be accepted for an amount less than it expresses, in which event it may be protested as to the balance; the acceptance binds the acceptor to pay, the only defenses he can interpose being the forgery of the bill of exchange or of the acceptance. (Arts. 486-491.)

Art. 673. Dishonor — Disabilities.— A bill not presented within the legal time for acceptance or payment, or not duly protested, is dishonored ("*perjudicada*") ; all parties through whose fault or negligence the dishonor is occasioned are liable for its consequences.

The time limited for presentation, acceptance, payment or protest does not run against anyone under legal disability,

but the person claiming disability must prove it. (Arts. 493-495.)

Art. 674. Guaranty of Bills.— The guaranty of the payment of a bill of exchange, (called *aval*), may be made by anyone not a party to it, either on the bill itself or in a separate document; the guarantor becomes bound according to the terms stated in the contract of guaranty, and if not limited, his liability is that of an endorser. (Arts. 496-498.)

CHAPTER 3.

PAYMENT.

Art. 675. Time and Manner of Payment.

676. Loss of Bill — Procedure.

Art. 675. Time and Manner of Payment.— Bills of exchange must be collected and paid on the day of maturity, at the place and in the legal currency designated therein; but if such money is not current in the Republic, payment may be in its equivalent in national currency at the current exchange. Payment may be made before maturity by consent, and at the risk of the payor; when paid before maturity, without objection by a third party founded in judicial decree, the payor is discharged of his obligation. The holder of a bill, although accepted in full, cannot refuse a partial payment, and must protest it for the unpaid balance, noting the payment on the bill and issuing a separate receipt for the amount paid, and retaining the bill until it is satisfied in full.

Accepted bills must be paid upon presentation of the copy containing the acceptance. Unaccepted bills may be paid after maturity, upon a second or later copy, where they provide that the payment of one of them annuls the original and other copies. The payor of a bill may require the holder to be identified by a resident of the place, and if he cannot do

so, may deposit the amount, on the day of maturity, in a reliable business house if there is no public institution of credit in the place. (Arts. 499-505, 508-509.)

Art. 676. Loss of Bill — Procedure.— All the parties to a lost bill of exchange must allow the use of their names, and use their efforts, to secure the issuance of a new bill, the owner paying the costs of obtaining it. In addition to such steps, the owner of the lost bill may, upon his own responsibility, request the payor to deposit the amount on the day of maturity in a public institution of credit, or in a business house to be agreed upon or designated by the judge if they cannot agree, and if he refuse, protest it as for non-payment, and enforce payment by the order of the judge before whom the ownership of the bill is proven. (Arts. 506-507.)

CHAPTER 4.

PROTEST.

Art. 677. Form and Requisites.

678. Time and Effects.

679. Notice of Protest — Payment.

680. Failure to Protest — Effects.

Art. 677. Form and Requisites.— Bills of exchange must be protested for non-acceptance and non-payment, before a Notary Public, or if none in the place, before the first political authority therein and two witnesses. The official making the protest will retain the bill until sunset, during which time the payor may pay the bill and expenses of protest; if not then paid, the official will deliver the bill to the holder with an annotation of its protest for want of acceptance or payment, dated and signed by the official making the protest, who, if a notary, will also deliver a certified copy of the protest to the holder, the original protest being returned to him by the political authority acting.

The notice (*acta*) of protest must contain: 1, The literal reproduction of the bill of exchange, its acceptance, endorsements, recommendations, and everything on it; 2, the demand to accept or pay the bill, stating whether the party was present when the demand was made; 3, the reasons given for refusing to accept or pay, if any given; 4, the signature of the person on whom the demand was made, stating his inability or refusal to sign, if such were the cause; 5, the statement of place, day and hour when the protest was made; and, 6, the signature of the official making the protest. (Arts. 510, 512-513, 516-517.)

Art. 678. Time and Effects.—Protest cannot be waived. Protest for non-acceptance or non-payment of a bill must be made on the day following its presentation or maturity respectively, unless it is a holiday, in which event it must be protested the next business day; if the person on whom the bill is drawn becomes insolvent, it may be protested before maturity and as soon as the fact is declared.

The protest must be made successively: 1, In the designated place of acceptance or payment; 2, in the domicile of the person who should accept or pay it; 3, in the domicile of the persons named in the bill to accept or pay it in case of necessity; 4, in the domicile of the acceptor by intervention. In the absence of the above persons from their domicile, the necessary acts of protest may be done with their clerks, acquaintances, servants, or any neighbor with an open house in the place where such acts are to be done.

The legal effects of protest are to impose the costs and damages on the person responsible for the protest, and to preserve the rights of action which the holder has against the persons liable on the bill. (Arts. 511, 514-515, 518-519.)

Art. 679. Notice of Protest — Payment.—All parties to a bill except those to whom protest for want of acceptance or payment was immediately made, must be notified of the pro-

test by the notary or authority making it, by means of written notices (*instructivos*), sent to those residing in the place of protest on the next day, and to those residing out of the place, by the next mail, registered, to the addresses given by the holder of the bill; the fact of such notice being endorsed on the protest.

Upon receipt of such notice, the drawer or any endorser of the bill may require the holder to receive the payment and costs and deliver up the bill; the drawer has preference in payment over the endorsers, and these in the order of their priority of endorsement. (Arts. 530-531.)

Art. 680. Failure to Protest — Effects.— Failure to present the bill, or to protest it, or to give notice of its protest, except where prevented by *vis major*, will result in the loss: 1, By the holder of his rights against the endorsers; 2, by each subsequent endorser of his rights against his preceding endorser; 3, by holder and endorsers of their rights against the drawer, provided the latter proves that he had provided funds for its payment at maturity; in which event the holder has a right of action only against the drawee. (Art. 532.)

CHAPTER 5.

INTERVENTION FOR HONOR.

Art. 681. Intervention “for Honor.”

Art. 681. Intervention “for Honor.”— After a bill is protested for non-acceptance or non-payment, any third person may intervene to accept or pay it; if several offer, the one whose intervention will release the largest number of parties will be preferred; the party whose failure to accept caused the protest will be preferred to an intervenor. The fact of intervention and in whose favor it is done, will be noted on the protest, and signed by the intervenor and the notary or

political authority and witnesses. The acceptance by intervention does not deprive the holder of any rights against other parties to the bill so long as it is unpaid. The person so accepting is bound to pay the bill the same as if it were drawn against him, and must notify the party for whom he accepted by the next mail; the latter may pay the bill at maturity in preference to the intervenor. If the intervenor pays the bill, he is subrogated to all the rights of the holder, except as follows: 1, If he pays for the drawer, he can only recover against him; 2, if he pays for the taker or any endorser, he can recover against the party for whom he intervened and all prior endorsers; 3, if the bill had been dishonored, he has only such rights as attach to the bill in that condition. (Arts. 520-526.)

CHAPTER 6.

RIGHTS OF ACTION OF HOLDER.

Art. 682. Remedies of Holder.

683. Actions — Defenses.

Art. 682. Remedies of Holder.— All signers of a bill of exchange are severally liable for its amount, with interest from the date of protest, costs and expenses, and the holder may bring suit against all or any of them, or an endorser may sue any prior endorser and the drawer; but after suit begun against some he cannot proceed against others except where the former is partially or wholly insolvent, and only until full satisfaction is obtained. Where the bill was protested for non-acceptance, the holder may bring the proper action to require security for payment or the deposit of the amount until the maturity of the bill. Even where the bill is dishonored the holder may bring suit against any party to it who wrongfully retains funds intended for its payment. (Arts. 527-529, 533.)

Art. 683. Actions — Defenses.— All such actions on bills of exchange are “executive” after the acknowledgment of signature by the defendant, but such acknowledgment is not required in case of an acceptor. Against such actions no other defenses are admissible than forgery, invalidity, payment, liquidated and “executive” set-off, prescription, delay or acquittance (*espera ó quita*) granted by the plaintiff in *escritura pública* or private document judicially recognized; any other defenses are reserved for the ordinary action, which may be brought if the court adjudges that the executive action does not lie in any case.

Any amount which the creditor may remit or release as to the debtor in the bill is a remittance as to all the parties. (Arts. 534–536.)

CHAPTER 7.

RE-EXCHANGE AND RE-DRAFTS. (RECAMBIO Y RESACA.)

Art. 684. Definitions — Incidents.

Art. 684. Definitions — Incidents.— The holder of a bill protested for non-payment, may draw a bill at sight against the drawer or any endorser; this operation is called “*recambio*” and the new bill “*resaca*”; the party paying the “*resaca*” may reimburse himself in the same way against prior obligors. The “*resaca*” must be accompanied by the original bill, certified copy of the protest, and the account of the “*resaca*,” in the name of the person against whom it is drawn, containing: The total amount of the bill and interest, costs of protest, commission, brokerage, revenue stamps and postage, and the costs of re-exchange, at the current rate between the place of re-draft and that where the bill was payable or endorsed respectively, which rate must be certified by a broker, or by two merchants if no broker in the place. This account must be a single document without copies, and

be paid by one endorser after another and finally by the drawer, each one paying only the part of the costs of re-exchange which concerns himself. Interest is not allowed on the items of expense except from the date of suit. (Arts. 537-544.)

TITLE II.

DRAFTS, ORDERS, NOTES, CHECKS AND LETTERS OF CREDIT.

CHAPTER 1.

DRAFTS, ORDERS AND NOTES.

Art. 685. Definitions — Form and Incidents.

Art. 685. Definitions — Form and Incidents.— A draft (*libranza*) contains a contract, not of exchange, by which one person is required to pay a certain sum to the order of another.

An order (*vale*) contains the obligation of one merchant to deliver to the order of another merchant a certain amount of money or goods. A note (*pagaré*) contains the obligation, arising from a mercantile contract, to pay to one person on the order of another, a certain amount (*de pagar á una persona á la órden de otra, cierta cantidad*).

Drafts, orders and notes to order must contain: 1, The date and place of issuance; 2, the name and signature of the person liable; 3, the amount of money or goods to be delivered; 4, the date and place of such delivery; 5, the person to whose order the document is drawn; 6, the commercial transaction out of which it arises, if not executed by one merchant to another; 7, whether the consideration is for value received, agreed upon, on account, or arises from another transaction.

Notes not payable "to order" are not commercial documents, and cannot be endorsed, and any endorsement on them is void; no action can be based on them except the common ones which the holder would have against the maker as for money or goods due independently of such action as he would have if the note were payable "to the order."

All provisions of law in regard to bills of exchange, as to their maturity, endorsement, payment, protest, and other incidents, are applicable to drafts, orders, notes, etc., to order; failure to protest releases the endorsers but not the maker of a note, who has the liability of a drawer and drawee. Orders and notes cannot be issued "at sight" and to bearer, except as provided in the law on "Institutions of Credit." (Arts. 545-551.)

CHAPTER 2.

CHECKS. (CHEQUES.)

Art. 686. Checks — Requirements.

687. Rights and Duties of Parties.

Art. 686. Checks — Requirements.— A check is only valid where the person issuing it has at the time funds sufficient to pay it, in the hands of a merchant, company or bank, which he is authorized to check against. The check must contain: 1, The place and date of its issuance; 2, the name of the merchant, company or bank on which it is drawn; 3, the name of the person in whose favor it is drawn, or that it is payable to bearer; 4, the amount, expressed in figures and words; 5, the name and signature of the drawer. Checks must be taken from stub-books issued by the merchants, companies or banks to their creditors on current account or by deposit, as authority to them to draw by check on them. Checks drawn in favor of a specified person are not endorsable; those payable to bearer pass by simple delivery. If a

check does not contain all legal requirements, the drawee may refuse to pay it, noting his reasons on the back of it; but payment cannot be refused or delayed solely for want of notice from the drawer if he has funds in the hands of the drawee; it is not subject to acceptance or protest. (Arts. 552-557.)

Art. 687. Rights and Duties of Parties.—A check must be presented for payment within eight days from its date if payable in the place where it is drawn, adding one day for every one hundred kilometers of distance if it is payable in some other place; if not presented within such time the holder loses all his rights against the drawer if the drawee becomes insolvent after that time and before payment.

The payment of checks payable to a specified person is evidenced by his receipt endorsed on it by such person, who if a stranger must be identified; that of checks to bearer or to a person or bearer is shown by its being in the possession of the drawee. The latter is not liable for any misuse of the checks which he gives out to his creditors to be drawn against him; but he cannot, without judicial order, delay the payment of a check to bearer, on the ground of its loss or theft. If he refuses payment, the holder may sue the drawer in executive action for the amount of the check and for damages; and a like action lies by the drawer against the drawee, provided his refusal is not based on the omission of any of the legal requisites of the check. (Arts. 558-563.)

CHAPTER 3.

LETTERS OF CREDIT.

Art. 688. Defined — Incidents.

Art. 688. Defined — Incidents.—A letter of credit is a document issued by one merchant against another, for the

payment, within a stated time, of a certain sum of money, or for certain goods or securities at their current value; it cannot be issued either to bearer or order, but must be to a specified person, who must prove his identity if required, and upon the payment of the amount or the lapse of the time stated, it loses its validity. A letter of credit is not to be accepted or protested, and the holder has no right of action against the person to whom it is directed if he fails to honor it in whole or part, nor against the merchant who issued it, and who may countermand it at any time, unless the latter has received the amount of it, or guaranteed it, or is indebted to the holder to that amount, in which event he is liable for the amount of the letter and for all loss and damages, unless the merchant on whom it is given has become insolvent, provided the signer did not know such fact at the time of issuing it; but the giver of the letter is bound to the payor for the amount he has paid, if paid within the time and not exceeding the amount stated therein.

The holder of a letter of credit must give the payor a receipt for the amount paid, and repay the amount to the giver of the letter, with exchange, if any, and interest at six per cent. if no other rate is agreed. If the letter is not cashed within the time limited, the holder must return it, or a voucher from the payee, to the giver, and until he does so he must secure or deposit the amount of it. (Arts. 564-575.)

CHAPTER 4.

ASSIGNMENT OF NON-NEGOTIABLE CREDITS.

Art. 689. Assignment — Effects.

Art. 689. Assignment — Effects.— Mercantile credits not payable to bearer nor endorsable, are transferable by assignment, which is effective against the debtor upon his being notified thereof before two witnesses. Unless otherwise

agreed, the assignor of such credits only warrants their legality and the character in which he makes the assignment. (Arts. 389-391.)

TITLE III.

DOCUMENTS TO BEARER; FORGERY, THEFT, OR LOSS OF SAME.

CHAPTER 1.

DOCUMENTS TO BEARER.

Art. 690. Instruments to Bearer.

Art. 690. Instruments to Bearer.—Checks may be payable to bearer, and are “executive documents” (*llevarán aparejada ejecución*) from the day of their maturity, as computed in the case of instruments to order, only requiring the acknowledgment of the signature of the party liable for their payment, and are subject only to the same defenses as bills of exchange, as stated in Art. 683.

All other instruments to bearer have the following legal effects: 1, They and their coupons are “executive” from the day they are due, or from presentation if no time of maturity is fixed; 2, they pass title by simple delivery; 3, they are not recoverable (*sujetos á reivindicación*) where they have been negotiated on exchange or by a broker, but the rightful owner may hold liable the person who wrongfully deprived him of possession and ownership.

Any holder of an instrument to bearer may compare it with its original (*con sus matrices*) at any time. (Arts. 616-618.)

CHAPTER 2.

FORGERY, THEFT OR LOSS OF INSTRUMENTS TO BEARER.

Art. 691. What Instruments Included.

692. Procedure — Declaration of Loss.

693. Procedure after Declaration.

694. Payment — Discharge.

Art. 691. What Instruments Included.—Instruments of credit payable to bearer, within the meaning of this section, are: Those legally issued against the Federation, States or Municipalities; those issued by foreign nations, whose quotation has been authorized by the Mexican Government; those payable to bearer, by foreign companies organized in conformity with the law of the State to which they belong, and complying with the provisions of this Code of Commerce; and those issued in accordance with their organic law by domestic companies and concerns. (Art. 619.)

Art. 692. Procedure — Declaration of Loss.—Where the owner of such instrument is by loss, theft or in any way deprived of its possession, he may appear before the competent judge of the place where the debtor is found, to prevent the payment or transfer of the capital, interest or dividends to any other person, or to secure the issuance of a duplicate to himself.

The owner will make a declaration (*denuncia*) before the judge, in which he must state the name, nature, nominal value, number if any, and series of the instrument, and if possible the time, place and manner in which he acquired the same, the time and place that he received the last interest or dividend, and the circumstances of his loss; and shall indicate the residence within the jurisdiction of the judge where all notifications shall be served on him; the proceeding shall be in the nature of an "*incidente*," in which the Ministerio Público shall intervene.

If the "*denuncia*" refers only to the payment of the principal or of interest or dividends, the judge, if satisfied of the justness of the ownership, should so adjudge, and at once order that the "*denuncia*" be immediately published in the official newspaper of the jurisdiction, naming a short period within which the holder of the instrument may appear, and that the party who issued the same be notified to withhold payment. If the "*denuncia*" is intended to prevent the negotiation or transfer of quotable instruments, the judge will notify the Exchange, or if there is none in the place, then two brokers, and if none, two merchants; the negotiation of such instruments by the Exchange or any broker of the place, after such notice, is void, and the acquirer is not entitled to recover them (*reivindicación*), but the third possessor has his action against the seller and against the agent who conducted the transaction. (Arts. 620-623, 631-632.)

Art. 693. Procedure after Declaration.—After one year from the "*denuncia*," if no one makes opposition to it, and if in the meanwhile two dividends have been declared, the claimant may apply to the judge for authorization to receive not only the interest or dividends due or to become due, but also the principal of the securities if it is also due. Upon such order being made by the judge, and before receiving payment, the claimant must furnish a sufficient bond, to be approved by the judge, equal to the amount of the payments due and double the amount of the last yearly payment, such bond being released after two years if no opposition is made; if the claimant fails to give such bond, he may require the debtor to deposit the amounts of interest or capital due, and may receive the same after two years if no opposition is made. If after such authorization the capital becomes due, he may receive it under bond or require its deposit, and if no opposition is made within five years from the authorization he may receive the amounts (*valores*) deposited. If the claim (*denuncia*) is in regard to coupons payable to bearer and

separated from the instrument (*título*), the counter-claimant (*opositor*) may receive their amount after three years from the judicial order adjudging (*estimando*) the claim, if the opposition is not contradicted. (Arts. 624-628.)

Art. 694. Payment — Discharge.— Payment made to the dispossessed claimant (*desposeído*) in conformity with the foregoing provisions, releases the debtor from all liability; any third person considering himself aggrieved has only a right of personal action against the counter-claimant (*opositor*) if he acted without just cause.

If before the debtor is discharged, a third bearer should present himself with the securities claimed, the first must retain them, and notify the judge and the first counter-claimant (*opositor*), indicating the name, residence or other facts by which it may come to the knowledge (*pueda venirse en conocimiento*) of the third bearer, and the proceeding shall be suspended until the matter is decided by the judge.

If no opposition is made within five years from the publication above required, the judge will declare the missing security void, notifying the debtor and ordering the issuance of a duplicate to the rightful owner; if a third claimant presents himself within the five years, the period shall be suspended pending the decision of the judge. The duplicate will recite the fact that it is a duplicate, will bear the same number and have the same legal effects and be negotiable in the same way as the original security, which will be annulled by its issuance; the issuance of the duplicate will be recorded in the book or register relating to the original. (Arts. 629-630, 633-634.)

BOOK IX.

CARRIERS AND TRANSPORTATION.¹

TITLE I.

COMMON CARRIERS.

CHAPTER 1.

THE CONTRACT OF CARRIAGE.

(*Código de Comercio*, Arts. 576-604.)

- Art. 695. Nature of Contract — Rescission.
696. Bills of Lading.
697. Rights and Obligations of Shipper.
698. Rights and Obligations of Carriers.
699. Rights and Obligations of Consignee.
700. Further Duties of Carriers.

Art. 695. Nature of Contract — Rescission.— The contract for inland transportation is mercantile when its object is articles of commerce, or irrespective of its object, when the carrier is a merchant or a regular common carrier. Unless otherwise stipulated, the carrier may employ another person to carry the goods, retaining the relation of carrier (*porteador*) to the shipper and that of shipper (*cargador*) to the latter; the last carrier must deliver the freight to the consignee (*consignatario*).

The shipper may rescind the contract, before or after the transportation has begun, upon paying the carrier, in the first instance, one-half, and in the latter the entire freight charges, and receiving the freight wherever it may be at the

¹ See Arts. 1030, *et seq.*, as to liabilities of carriers.

time, but not otherwise. The contract is *de facto* rescinded before or during the shipment, upon the happening of any event of *vis major* which prevents its completion, such as declaration of war, embargo on commerce, seizure of the road, or other similar happening. In such event both parties lose any costs they have incurred, if the shipment has not begun, and if it is in course, the carrier may recover freight for the distance carried, but must deposit the goods with the judicial authority of the place beyond which they cannot be carried further (*punto en que ya no le sea posible continuarlo*), proving that they are in the condition indicated in the bill of lading, and receiving a voucher to that effect, of which fact he must advise the shipper, who is then responsible for the property. (Arts. 576-580.)

Art. 696. Bills of Lading.—The carrier must issue to the shipper a bill of lading, in duplicate if requested, which shall contain: 1, The name, surname and residence of the shipper, the carrier, and of the consignee, unless the goods are deliverable to the bearer of the bill of lading, which fact must then be stated; 2, the description of the goods, stating their kind, weight, and any marks or signs on the package containing them; 3, the amount of freight charges; 4, the date of shipment; 5, the place of delivery to the carrier; 6, the place and time where delivery must be made to the consignee; 7, the amount of damages which the carrier must pay in case of delay, if any agreement is made on this point. The omission of any of these recitals does not invalidate the bill or destroy its probative force, but the omissions may be supplied by proof.

Bills of lading must be issued from stub-books, and may be in favor of the consignee or to his order, or to bearer; any interested party may request copies, which must be marked as such. The lawful bearer of the bill of lading is subrogated to all the rights and obligations of the shipper. The bills of lading are the evidence of the contract between

the shipper and carrier, who are bound by its terms, and can make no other defense against it than forgery or material error in its redaction. The bill of lading is to be returned to the carrier upon the receipt of the goods shipped; by the act of surrendering the bill all claims and rights of action are extinguished, unless at the time either party notes in writing on the bill itself any claims he may wish to reserve; if the bill has been lost or cannot be produced and surrendered, the consignee must give the carrier a receipt for the goods, which has the same effects as the return of the bill of lading, and if this were to order or to bearer, the receipt must comply with all the requirements of the bill of lading. Questions arising from such loss will be decided upon the proofs offered by the parties, the shipper being always required to prove the delivery of the freight.

Freight bills of lading and passenger tickets may be different in form, but each must contain the name and address of the carrier, date of issue, points of departure and arrival, price, and in regard to baggage, the number and weight of pieces and other marks for its identification. Where the carrier has fixed tariff rates and times, it is sufficient for the bills of lading to refer to such schedule and regulations as to prices, times and special conditions; and if they are not determined by the schedule, the carrier must apply the rates which are cheapest, stating the same and the accompanying conditions in the bill of lading or ticket. (Arts. 581-587.)

Art. 697. Rights and Obligations of Shipper.—The shipper must: 1, Deliver the goods in the condition and at the place and time agreed; 2, furnish the necessary fiscal or municipal documents for the free transit of the freight; 3, bear such confiscations, fines or penalties which may be imposed for violation of the revenue laws, and indemnify the carrier for any damages caused by such violation; 4, bear the losses and damages which the goods may suffer from their own defects or from accident, except as provided in clauses 9 and 10

of the following Article; 5, indemnify the carrier for all loss and damage due to non-fulfillment of the contract, and for all necessary expenses outside its terms incurred in fulfilling it; 6, to promptly send the bill of lading to the consignee so that he may have it when the goods arrive.

The shipper has the right to change the consignment or destination of the goods while in transit, upon giving the carrier timely order, and surrendering the bill of lading and paying the freight agreed upon, receiving a new bill of lading in exchange. (Arts. 588-589.)

Art. 698. Rights and Obligations of Carrier.— The carrier is bound: 1, To receive the goods at the time and place agreed; 2, to begin and terminate the carriage within the time and by the route stipulated in the contract, and if no time is fixed, then at once or by the first conveyance; 3, to carefully keep the goods on its exclusive responsibility until delivered to the consignee; 4, to deliver the goods to the holder of the bill of lading or of the proper order if there is no bill; 5, to pay the damages agreed upon or suffered in case of delay, less the amount of the freight; 6, to deliver the goods by weight, count or measure, if so called for in the bill of lading, unless where packed, and the packages must be delivered in good condition; 7, to prove that any delay or damage to the goods was not caused by his fault or negligence; 8, to pay all losses or damages for which he is liable, according to the value of the goods, as fixed by experts in view of the terms of the bill, at the time and place of delivery; 9, to pay the shipper or consignee all damages caused by his fault or failure to fulfill the contract.

The carrier is entitled: To receive one-half the agreed freight charges where the shipment is not made through the shipper's fault, and to receive the whole amount where in accordance with the contract he had furnished a special conveyance exclusively for the shipment, deducting any amount received from other use of the same; to rescind the

contract if after the shipment has begun it cannot be concluded by reason of *vis major*, or to continue the shipment upon the removal of such impediment, by the route indicated in the bill of lading, or the next best if the former is not possible, and if the latter is longer or more expensive, he may collect the excess but nothing for the delay; to require the shipper to open and verify the contents of packages offered for shipment, and if he refuses the carrier is released from all liability not arising from fraud; to deliver to the consignee the uninjured portion of a damaged shipment, if upon being separated its value is not diminished; to retain the goods shipped until the freight is paid; to deposit the goods with the judicial authority of the place of delivery, if the consignee or his representative is not found or refuses to receive them, their condition being first examined by experts.

The carrier's civil liability for loss or damage is extinguished by the receipt of the goods without complaint, or by the lapse of six months in case of shipments within the Republic and one year for those to foreign countries, counted from the day after the end of the trip in case of loss and from twenty-four hours after delivery in case of damage. (Arts. 590-594.)

Art. 699. Rights and Obligations of Consignee.—The consignee is bound: 1, To promptly receive the goods, when their condition permits and they are in the condition stated in the bill of lading; 2, to open and inspect the packages upon receipt if required by the carrier, who is released from all liabilities except for fraud if he refuses; 3, to surrender the bill of lading, or give the receipt required by Art. 696; 4, to pay the freight and costs, saving any claims he may have; 5, to enforce any rights he may have against the carrier within twenty-four hours after the receipt of the goods; 6, to observe the directions of the shipper and promptly notify him of anything affecting the consignment.

The consignee has the right: 1, So long as he holds the bill of lading issued in his favor, to have the goods delivered to him, notwithstanding any later orders to the contrary given by the shipper; 2, to refuse to receive the goods in the cases herein provided, or when their value is not sufficient to cover any expenses he may have to make for their reception, preservation and sale, unless he has received sufficient funds from the shipper; 3, to be immediately reimbursed for any expenses he may incur in receiving them; and to all the other rights conferred herein. (Arts. 595-596.)

Art. 700. Further Duties of Carriers.—Carriers must observe the terms of the regulations and circulars they issue where not contrary to the provisions of this law. They cannot refuse to receive passengers or goods at their main station or the stations established along the line for such purpose; if received by the station-master or conductor, or by the master of a vessel, at any other point, it is bound to carry them, but may hold such employé to account.

Carriers are also obliged: 1, To publish their regulations in the official newspaper of the State, District or Territory, and in circulars which they must post in public places, in the most visible place in their offices, and in each vehicle of carriage, and must print those relating to freights on the backs of their bills of lading; 2, to furnish their passengers with tickets for seats, and furnish bills of lading as herein prescribed to the shippers; 3, to begin and end trips on the days and hours announced, although all seats are not taken, and they are not fully freighted on the day they contract to carry it; 4, to deliver the freight at the points agreed, immediately upon arrival at its destination, to the bearer of the bill of lading upon his complying with its conditions, or to deposit it in its depots until he calls for it; also to deliver to passengers at the end of the trip such baggage as they have entrusted to the conductor, if it is his duty to take care of it.

The shipper must declare the contents of packages of freight if so required by the manager or by station agents at the time of receiving it but at no other time; but passengers cannot be required to disclose the contents of their hand baggage which their tickets permit them to carry.

In case of loss imputable to the carrier, the passenger or shipper must prove the delivery and value of the property delivered to the manager of the carrier or to its accredited agents or factors.

If the goods deposited in the carrier's depots remain for the time prescribed in the regulations without being claimed, they must be turned over to the judicial authority of the place, who must at once sell enough to cover all charges, the balance to be disposed of in accordance with the law in such cases; the carrier is thereupon released of all further responsibility upon exhibiting the certificate of the judicial authority to whom the property was turned over. (Arts. 597-604.)

CHAPTER 2.

CARRIERS AND HIRERS OF CARRIAGE.²

(*Código Civil*, Arts. 2510-2529.)

Art. 701. Contracts of Carriers.

702. Liability of Carriers.

703. Hirers of Livery.

Art. 701. Contracts of Carriers.— Contracts for carriage of persons and property by land and water, under the immediate direction of the carrier or of his employes, are governed by the Commercial Code, as stated in the previous Chapter, and in default of its provisions, by those of the Civil Code, where the carrier is regularly engaged in such business; the general

² See Arts. 1030, *et seq.*, as to liability of carriers.

rules as to contracts and the provisions of this Chapter apply in all other cases. (Arts. 2510-2511.)

Art. 702. Liability of Carriers.—Carriers are liable for damages caused to persons through defects of the vehicles or teams which they employ, and for loss or injury to property carried, unless they prove that the mishap occurred through superior force or unavoidable accident not imputable to them, or through defects in the property; they are also liable for omissions and mistakes in forwarding the property, and for damages caused by delays in beginning or during the trip or by change of route, unless due to like circumstances; but are not liable where the things are not delivered to them, but to employés not authorized to receive them, in which event only the person to whom they were delivered is liable. The conductor, and not the passengers or owners of the property carried, unless they are at fault, is liable for all infractions of fiscal and police regulations committed during the trip; nor is the carrier liable for the penalties imposed unless he is at fault, but he is liable for all damages, according to the Penal Code, but may recover over against the conductor who caused the damage; the carrier or conductor must remedy all accidents occurring, avoiding so far as possible burdening the passengers; the latter cannot require the trip to be hastened or delayed or any change in the route or stops, where these are indicated in the contract or regulations; and are liable for all damages caused by their fault or disregard of the regulations.

The carrier is liable for damages arising from the dangerous nature or bad quality of the article carried or from its bad packing, if he knew such conditions; otherwise the shipper is liable for damages caused to the thing carried and to the vehicle, persons and other things. The carrier is entitled to payment and expenses of the transportation as provided in the contract, and if not agreed upon, then to the customary charges, and is entitled to a lien for the same.

The carrier must keep a register in which everything received for carriage must be entered. All actions arising from the transportation, in favor of or against the carrier, must be begun within six months after the end of the trip. (Arts. 2512-2526, 2529-2531.)

Art. 703. Hirers of Livery.—A liveryman must declare any defects in the animals or vehicles which he lets for hire, and is liable for damages resulting if he fails to state them; if the animals die or become sick or the conveyance becomes useless, the loss is upon him unless he proves that it was due to the fault of the hirer. (Arts. 2527-2528.)

BOOK X.

BANKRUPTCY.

TITLE I.

CIVIL AND COMMERCIAL FAILURES.

(*Código de Comercio*, Arts. 945-1037.)

CHAPTER 1.

GENERAL RULES.

- Art. 704. Who may be Bankrupts — Effects.
705. When Bankruptcy Declared.
706. Kinds of Bankruptcy.
707. Culpable Bankruptcy.
708. Fraudulent Bankruptcy.
709. Accomplices of Bankrupt.

Art. 704. Who May be Bankrupts — Effects.— Every merchant suspending payments is considered in a state of bankruptcy; he may be declared bankrupt within five years after retiring from business, where the suspension of payments occurred while he was engaged in business or within a year afterwards. The bankruptcy of a deceased merchant may be declared within one year after his death. An assignment of property made by a merchant before the civil courts raises the presumption of a state of bankruptcy, and upon being established (*formalizada*), the proceedings prescribed in this Book must be followed, the assignor not being entitled to any of the privileges which the civil law grants in such cases.

The bankruptcy of a collective or of a coöperative company with several and unlimited liability involves that of all

its members, and that of a company "*en comandita*" only that of the active (*comanditados*) members; in all other companies the members are not affected; that of the members does not alone involve that of the company.

If a foreign mercantile concern having branches in Mexico becomes bankrupt abroad, the latter shall be put in liquidation, or declared bankrupt if such is legally their condition, observing in all respects the provisions of the Commercial Code. Accomplices of a bankrupt guilty of a culpable or fraudulent bankruptcy, although not merchants, are subject to the provisions of this Code in regard to civil liability, and to the Penal Code in respect to their criminal liability. (Arts. 945-950, 1017.)

Art. 705. When Bankruptcy Declared.—Bankruptcy may be declared: 1, At the request of the bankrupt himself; 2, upon the founded petition of a lawful creditor. Merchants or mercantile concerns are reputed in a state of bankruptcy in the following cases: 1, When they have in fact suspended payment of their commercial or civil debts which are liquidated, matured, evidenced by public instrument or by private instrument acknowledged, or where execution is issued against them by a creditor and insufficient property is found on which to levy; 2, where their liabilities exceed their assets by twenty-five per cent; 3, where they have made an assignment in favor of creditors; 4, where they conceal or absent themselves without leaving their establishment in charge of some one who can meet the liabilities due and becoming due. (Arts. 951-952.)

Art. 706. Kinds of Bankruptcy.—Bankruptcy is either accidental (*fortuito*), culpable or fraudulent; it is accidental if it is not embraced in any of the cases covered by the two following Articles. (Arts. 953-954.)

Art. 707. Culpable Bankruptcy.—The bankruptcy is cul-

pable: 1, If the household and personal expenses of the bankrupt have been excessive as compared with his net assets, social status and the size of his family; 2, if the expenses of his business are unduly large as compared with his capital and volume of business; 3, if he has lost heavy sums in gaming, speculation or stock transactions; 4, if for the purpose of delaying failure he has bought goods on credit to sell at less than current prices, has borrowed money, put securities into circulation or employed other ruinous means of raising money; 5, if after suspension of payments he pays one creditor, whose debt is due, to the prejudice of others; 6, if he fails to preserve letters received in regard to his business, thereby suppressing any matters relating to the course of the failure; 7, if he has signed bonds or contracted obligations on another's account out of proportion to his means, without taking ample security for his own liability; 8, if within six months before his failure, he has borrowed goods with or without interest, at more than market prices, or money at a rate more than one per cent. a month greater than current rates; 9, if he fails within three days after suspension of payments to make the required declaration, or if such declaration, being made by a company, does not contain the names of every one of the individually-liable members, or it is false in any particular; 10, if he does not personally appear before the court or sindics in the cases where this is required, unless with lawful excuse; 11, if it appears that during the time between the last inventory and the declaration of bankruptcy, he was at any time directly indebted in double the net assets shown by the inventory. (Art. 955.)

Art. 708. Fraudulent Bankruptcy.—The bankruptcy is fraudulent: 1, If the bankrupt has no books or inventories, or failed to keep them in the form required by the Code, or if the inventories fail to show the true state of assets and liabilities, or have been mutilated, altered or concealed; 2, if he

fails to make the inscriptions required in the Commercial Register; 3, if he is declared bankrupt a second time without having complied with a previous composition; 4, if he has executed *escrituras públicas* or private documents acknowledging himself indebted without stating the nature or amount of the debt, unless proof of both appears in his books and in the course of business; 5, if he has concealed money, effects, credits or other property of any kind; 6, if before or after the declaration of bankruptcy he has bought for himself in the name of another, any property or credits, or has transferred any of his own without receiving their value; 7, if he has made fictitious transfers or created or recognized fictitious debts; 8, if he does not prove the existence or disposition of the assets of the last inventory, or that of money or other assets coming into his hands since; 9, if he absents himself or absconds without leaving some one in his establishment to pay the debts due and becoming due; 10, if he creates fictitious debts or exaggerates their amount, or in any way creates an appearance of assets or liabilities which do not exist; 11, if he has used for himself or in his business goods or funds entrusted to him for other purposes; 12, if without authority he has negotiated commercial paper to order entrusted to him for collection, remittance or other purpose, without paying over the proceeds; 13, if he conceals entirely or for any time from his principal the fact of sale of goods or payment of debts entrusted to him for sale or collection; 14, if he has discounted bills of exchange by his own draft on persons in whose hands he has no funds or who have not authorized him to draw on them; 15, if he has paid in advance in any manner a debt not due until after the declaration of bankruptcy, to the prejudice of other creditors in view of the bad state of his affairs; 16, if after proceedings begun in respect to the state or declaration of bankruptcy, he has applied to his own uses or invested in other objects any money, goods or effects of the estate; 17, if he has a possibility of meeting his liabilities, but presents himself as a

bankrupt with the intention of making a profit by discounting the payment of his debts; 18, if after the last inventory and two months before the declaration of bankruptcy, his liabilities should show an excess of twenty-five per cent. over his assets without his making the required declaration of a state of bankruptcy; 19, if he has failed to make inventories at the times prescribed by the Code or fixed in the company by-laws or contracts on the subject; 20, if he does any other act which fraudulently decreases his assets or increases his liabilities; 21, if the bankrupt is a broker. The failure is presumed fraudulent, unless the contrary is proven, where the true condition of the merchant cannot be determined from his books. (Arts. 956, 958.)

Art. 709. Accomplices of Bankrupt.—The following are regarded as accomplices of a fraudulent bankruptcy: 1, Those who in collusion with the bankrupt to create fictitious or exaggerated debts, support the false claims in the judicial hearing of claims or in any meeting of creditors; 2, those who in collusion with the bankrupt for the purpose of obtaining a preference in rank over other creditors, alter the nature or date of their claim, although before the declaration of bankruptcy, and support the false claim at the hearing or in any meeting of creditors; 3, those who before or after the declaration of bankruptcy aid the bankrupt to conceal or suppress assets; 4, those who with notice of the declaration of bankruptcy conceal property or papers of the bankrupt or deliver them to him instead of to the syndics; 5, those who refuse to turn over to the administrators of the bankrupt estate property of the bankrupt in their hands; 6, those who after the declaration of bankruptcy accept transfers or endorsements from the bankrupt; 7, creditors who make private agreements with the bankrupt to the prejudice of the estate; 8, brokers who after the declaration of bankruptcy take part in any transaction of the bankrupt; 9, those who wrongfully

aid the bankrupt in any kind of deceit, suppression or concealment.

The husband or wife, consanguinous ascendants, or relations by affinity of the bankrupt who without his consent suppress or conceal property of the estate, are not regarded as accomplices, but as guilty of larceny. Accomplices, besides their criminal liability, will be civilly condemned to the loss of any right they have in the bankrupt estate, and to restore to it any property, rights and actions in the suppression or concealment of which they are implicated.

The culpable or fraudulent bankruptcy will be prosecuted: 1, By the *Ministerio Público* after its character has been established by final judgment; 2, upon complaint of the syndic, where he is authorized to make it by a majority of the creditors; 3, upon the complaint of any creditor, and at his own expense in the criminal proceeding, without any right to reimbursement out of the estate, whatever may be the result of his proceeding. (Arts. 957, 959-961.)

CHAPTER 2.

EFFECTS OF BANKRUPTCY.

Art. 710. Effects of Bankruptcy.

711. Exemptions of Bankrupt.

712. Property of Husband and Wife.

713. Property Withdrawn from Bankrupt Estate.

714. Time of Bankruptcy.

715. Foreign Bankruptcy — Effects.

716. Consolidation of Suits.

Art. 710. Effects of Bankruptcy.— Upon the declaration of bankruptcy, the bankrupt retains the full title and control of exempt property, and the administration of the individual property of his wife and children, unless the former obtains the separation of her own. He loses the administration of all other property, present and future, but retains its title (*do-*

minio) strictly subject to the provisions of the Commercial Code; all such rights pass to the bankrupt estate, represented by the *sindic*, who is vested by his appointment with all the powers of the holder of a general power of attorney except as limited by the Code; all powers of attorney or commissions previously conferred on the bankrupt are terminated, and his agents shall cease to act upon notice of the suspension of payments, and shall immediately liquidate their operations.

The declaration of bankruptcy does not deprive the bankrupt of the exercise of his civil rights, except as specially provided; but it has the civil and penal effects of "*arraigo*" upon him, so that he cannot leave the jurisdiction without the consent of a majority of the creditors, in which event he must leave an attorney in fact with full instructions; if he leaves without complying with both requirements he is guilty of contempt of court. The bankrupt cannot sue or be sued in respect to the bankrupt estate; suits regarding it must be brought against the *sindic*, but the bankrupt may assist him with the permission of a majority of the creditors.

Upon the declaration of bankruptcy, all debts of the bankrupt shall become due, and a discount of six per cent. a year from the day of payment until they would have matured, shall be deducted upon the payment of those which do not draw interest; and current accounts shall be liquidated at once so as to collect or pay the amounts due in the proper manner and form; interest is stopped on all debts except those secured by mortgage or pledge, which must be satisfied only out of the proceeds of the property affected; bonds lawfully executed by the bankrupt do not bind the estate, and any amount due by reason of the same before the declaration is to be treated as a simple debt of the class to which it may belong.

All transactions of the bankrupt at any time before the declaration, by which he knowingly defrauded any creditor, where the fraud is discovered previous to the declaration, are void; as are all contracts and operations made upon

gratuitous title in favor of ascendants or descendants, or in settlement of obligations not matured or realized, within thirty days before the date of the bankrupt's failure to pay the first obligation the failure to pay which caused the bankruptcy. The creditor who within such time increases his debt in order to get a mortgage, pledge or other security, can only hold such security for the amount of the increase, if valid under the provisions of the Code. Wherever the restoration of any object or amount is decreed, it shall include the return of the net products or interest accruing during the time it was employed. If the bankrupt refuses an inheritance or legacy, the syndic, by leave of court, may accept it in his name on behalf of the estate, so far as necessary to pay creditors and the costs of the bankruptcy proceedings. Where the bankrupt dies after bankruptcy is declared, or his estate is bankrupt, his administrators or heirs shall have the same rights and obligations in the course of the proceedings, except as to penal liabilities, as if he had lived. (Arts. 962, 967-981.)

Art. 711. Exemptions of Bankrupt.—The following property is exempt from embargo and the exemption cannot be waived: 1, The bed and necessary wearing apparel and furniture of the debtor, his wife and children, which in the opinion of the judge are not *de luxe*; 2, the instruments and tools necessary to the debtor's art or trade; 3, oxen and other farm animals so far as necessary for service on the farm where they are employed; 4, the books of persons engaged in literary professions, so far as they are necessary to the exercise of the profession, in the opinion of the expert appointed by the judge to report on the subject; 5, the instruments of doctors, surgeons and engineers so far as necessary to the exercise of their profession, in the opinion of the expert; 6, the arms and horses of soldiers in actual service which are indispensable under the law; 7, effects employed in the development of industrial enterprises so far as

necessary for its uses, in the opinion of the expert; 8, crops before harvest time; 9, the right of usufruct, but not its "fruits;" 10, rights of use and occupancy; 11, provisions in the cases mentioned in Art. 815; 12, easements, unless in favor of the estate attached, except the easement of waters, which may be attached when upon the dominant estate; 13, life annuities under the provisions of Art. 460, the salaries and emoluments of public officials and employés, civil or military, and pensions paid out of the Public Treasury. (Art. 963.)

Art. 712. Property of Husband and Wife.—The bankrupt is presumed to own, and is excluded from the control of property apparently belonging to his wife, where it is real estate acquired during marriage, under whatever regimen, which is presumed not to have been bought with her money, and personal property used by the husband, and jewels, pictures and precious articles whether belonging to one or the other; the wife has the right to recover possession of such property, where she can clearly prove that it belonged to her before marriage or was bought by her during marriage with her own money, the syndic being entitled to notice of such claim and to be heard. The interest of the bankrupt in the profits from the property of his wife and children, after deducting legal charges, included in which is one-half, or such other part as the marriage settlement provides, of the property acquired during the coverture, belongs to the bankrupt estate, and the common debtor must turn it over to the syndic every two months under penalty of intervention in the administration if he fails to do so. (Arts. 964–966.)

Art. 713. Property Withdrawn from Bankrupt Estate.—Merchandise, effects and all other kinds of property in the bankrupt estate, not the absolute property of the bankrupt, shall be returned to its lawful owners, upon their claims being admitted in a meeting of creditors or established by

final judgment, the bankrupt estate retaining any rights the bankrupt may have to such property upon its complying with any conditions attached thereto; the following property is embraced in this provision: 1, Unappraised dowry property, or that appraised which remains in the husband's possession, where its receipt appears by duly registered *escritura pública*; 2, paraphernal property of the wife, whether in its original form or changed or invested in others, where such change or investment appears in the commercial register; 3, the patrimony of a child or ward, where duly registered; 4, property held in deposit, administration, lease, hire or usufruct; 5, merchandise held on commission of purchase, sale, shipment or delivery; 6, bills and notes without endorsement or assignment passing title, received for collection or on another's account, issued or endorsed directly to the principal; 7, funds sent to the bankrupt to be delivered for the sender to a certain person or to pay the sender's debts at the place; 8, cash and paper derived from sales made on another's account, and held to be remitted in due time, which will be presumed where the items have not passed into current account between the parties; 9, goods sold to the bankrupt for cash but not paid for in whole or part, so long as the same remain packed or unbroken and can be distinguished by the marks and numbers on the packages; 10, merchandise bought on credit, while undelivered at his store or other agreed place, or the bills of lading of which have been forwarded to him after being loaded at the buyer's order and risk; 11, securities and objects given in pledge under *escritura pública*, broker's policy or *bono de prenda*, unless the creditors resolve to pay the debt secured and take possession of the pledge; where the object is a *bono de prenda* and the creditors do not exercise this right, the rules prescribed in regard to such securities will be observed; other pledges will be disposed of by sale through a broker or by judicial sale; any balance will be paid into the bankrupt estate, but if the sale does not satisfy the debt, the pledgee will occupy the rank of an ordi-

nary commercial creditor as to the balance due; 12, the bills in circulation of bankrupt Banks. (Arts. 998-999.)

Art. 714. Time of Bankruptcy.—As a general rule a commercial establishment is considered bankrupt as of the time of the inventory or balance which shows such condition, where this is made at least once a year; but if before making the same, some unforeseen but really notorious event should render the merchant unable to meet his obligations, the bankruptcy is held to take place at that time. If a merchant suspends payment of his civil debts, not having sufficient property independent of that employed in his commercial business to meet them, or cannot pay them out of such business without suspending payment of his commercial obligations, he is considered bankrupt as of that moment; but suspending payment of one or more civil debts is not bankruptcy if he can pay them without causing the failure of his commercial business. The commencement of bankruptcy may be modified in all cases according to the facts shown in the record and considerations of justice arising therefrom. (Arts 984-987.)

Art. 715. Foreign Bankruptcy — Effects.—Except as provided in Art. 704, a declaration of bankruptcy made in a foreign country cannot be pleaded against creditors of the bankrupt in Mexico either to defeat their rights upon property in Mexico or to avoid contracts made with the bankrupt. (Art. 982.)

Art. 716. Consolidation of Suits.—All suits pending against the bankrupt shall be consolidated with the bankruptcy proceeding, except those in which final judgment has been rendered and notice given in courts of first instance, those concerning debts secured by mortgage or pledge, and those brought for the purpose of securing sales by auction to pay debts due to Banks or Institutions of Credit. (Art. 983.)

CHAPTER 3.

COMPOSITIONS WITH CREDITORS.

Art. 717. When and How Made.

718. Dissenting Creditors.

719. Effects of Composition.

720. Rehabilitation of Bankrupts.

721. Payment of Debts — Sections.

Art. 717. When and How Made.—Any bankrupt, except fraudulent ones and those guilty of violation of the "*arraigo*," may make such compositions with his creditors as they may agree upon, either before or after the bankruptcy and at any stage of the proceedings; if after the declaration, they must be made in a duly constituted meeting of creditors; private agreements are void; the creditor making them loses his rights in the bankruptcy, and the bankrupt will be adjudged culpable if not fraudulent. Preferred and secured creditors may refrain from taking part in the composition proceedings without prejudice to their rights, but if they take part, they are bound by any extensions or releases granted, but their claims retain the order and rank to which they are entitled. The proposed composition must be discussed and adopted by a majority of creditors present, whose claims represent three-fifths of the total unpreferred and unsecured liabilities. (Arts. 988–991.)

Art. 718. Dissenting Creditors.—Within eight days from the adoption of the composition, dissenting creditors and those not taking part in the meeting may oppose its approval; the only grounds of opposition are: 1, Defects in the form of calling, holding and conducting the meeting; 2, that any person voting was not duly entitled, where his vote made up the majority of number or amount; 3, fraudulent understandings between the bankrupt and one or more cred-

itors, or among the creditors, to vote for the composition; 4, fraudulent exaggeration of claims to make up the majority of amount; 5, fraudulent incorrectness in the general balance of the bankrupt's business or in the reports of the syndics, to procure the acceptance of the bankrupt's propositions. (Arts. 992-993.)

Art. 719. Effects of Composition.—When the composition is approved by the judge, by decree which is appealable in both effects by any unsecured creditor, it is binding on the bankrupt and on all creditors whose claims antedate the declaration of bankruptcy, whether included in the schedule of creditors or not and whether or not they took part in the proceedings, provided they were legally notified, or after notice of the approval of the composition failed to oppose it as above provided. Unless expressly stipulated to the contrary, the remitted part of the debts is extinguished by the composition; but if the bankrupt fails to comply with its terms, any creditor may petition the court having cognizance of the proceeding, for the rescission of the composition and the continuation of the bankruptcy. If no composition is agreed on, creditors not paid in full out of the bankrupt estate retain their right of action to recover the balance due out of any future property of the bankrupt. (Arts. 994-997.)

Art. 720. Rehabilitation of Bankrupts.—The judge before whom the bankruptcy proceedings were had may decree the rehabilitation of the bankrupt on the following conditions: Those of the first class upon their protesting in legal form that they will pay their unpaid debts as soon as their condition permits; those of the second class, upon making the like protest and giving security acceptable to their creditors; both classes are rehabilitated by a legal agreement (*convenio*) with their creditors by which they remain in control of their property. All except fraudulent bankrupts are rehabilitated

upon paying their creditors in full; fraudulent bankrupts, upon compliance with any penalty imposed on them, or being pardoned, or its being prescribed, come within the second class. The rehabilitation of the bankrupt removes all legal incapacities produced by the declaration of bankruptcy. (Arts. 1009-1015.)

Art. 721. Payment of Debts — Sections.— From the net proceeds of the bankrupt estate, the creditors will be paid in the order herein established, all claims being divided into two sections, the first including all which are to be paid from the proceeds of the personal property, the second those to be paid from the proceeds of the real estate. The order of payment of creditors in the first section is as follows: 1, Creditors specially preferred, in this order: a, The federal, local or municipal treasury; b, expenses of preserving the property, administering the bankrupt business, and of other properly authorized acts for the common good; c, funeral expenses where the death occurred before bankruptcy; d, funeral expenses where the death occurred after bankruptcy are only preferred when incurred by the syndic or administrator of the estate with the authorization of the judge; e, the expenses of the last illness where death occurred before bankruptcy; f, claims for personal services, including business employés for the last six months before the bankruptcy; g, rents due, with all that remains of the property rented, including the year's crops in case of farming lands; h, claims due for provisions furnished the bankrupt or his family; 2, preferred creditors under liens granted by the Commercial Code; 3, ordinary commercial creditors; 4, creditors under civil contracts of any kind, including unpaid balances of mortgage debts.

The order of payment of creditors in the second section is: 1, Creditors with real rights, on the terms and in the order established in the civil law; 2, creditors specially pre-

ferred and others included in the first class, according to the order therein established.

All creditors of one category must be paid in full before passing to the next, and pro rata in each category without distinction of dates, except as to mortgage creditors and those having liens on specific property, where if there are several of the same class the general rule will be observed; any sums received by mortgage creditors from the sale of personal property will be credited on their claims against the real estate. Maritime creditors are governed by the maritime law. (Arts. 1000-1008.)

CHAPTER 4.

CLASSIFICATION OF CIVIL CREDITORS.

(*Código Civil*, Arts. 1928-1964.)

Art. 722. No Exemptions — Mortgage Foreclosure.

723. Separate Proceedings.

724. Order of Preference.

725. First Class Creditors.

726. Second Class Creditors — Lienors.

727. Third Class Creditors.

728. Fourth Class Creditors.

729. Other Creditors.

Art. 722. No Exemptions — Mortgage Foreclosure.— All the property, present and future, of a debtor is liable for his debts, unless expressly provided to the contrary in the contract.

Owners of personal property left in the possession of a debtor becoming bankrupt, and mortgage creditors, do not come into the bankruptcy proceedings as general creditors, but the personal property will be delivered to its owner upon his proving his right, or in case of opposition, he may retake the property, or foreclose the mortgage, by the proper forms of action, which will be against the debtor if he opposes the

right, against the syndic if the creditors oppose, and against both if debtor and creditors oppose.

Where the mortgage expressly so provides, the property may be sold without judicial formalities, in which case the creditor must present his evidence of debt to the judge in bankruptcy to be noted by him, and declare the terms on which the property was sold, so that any surplus may go into the bankrupt estate. If the mortgagee does not appear during the insolvency "concourse," the concourse may, before judgment of classification, order the property sold and the amount of the debt and interest to be deposited, holding the balance in accordance with the law as to absentees and the provisions of the Code of Procedure. Out of the proceeds of sale shall be paid as follows: 1, The costs of the suit and sale; 2, the necessary costs of keeping and handling the property; 3, the duly proven costs of insurance on the property; 4, the taxes due for the last five years; 5, the mortgage creditors in the order of dates of registry, with interest for the last five years; the surplus, together with his other assets, shall be distributed to the general creditors. (Arts. 1928-1935, 1944.)

Art. 723. Separate Proceedings.—If among the assets of the bankrupt there is found any real or personal property acquired by inheritance, which is encumbranced in favor of certain creditors of the deceased, such creditors may have it separated and a special concourse held in respect to it, if such request is made within three months from the beginning of the concourse or from the acceptance of the inheritance, and unless the creditors have made some novation of the debt or accepted the personal responsibility of the heir. Such creditors cannot share in the principal concourse although the property separated is not sufficient to satisfy their claims. If any property belonging to a company of which the bankrupt is a member is found among his assets, it will be at once separated, and only his own property, including that be-

longing to him as a partner, will be administered. (Arts. 1936-1939.)

Art. 724. Order of Preference.—Creditors will be classified in the order stated in the following Articles, with the preference indicated for each class, and in the manner and form provided by the Code of Procedure; if there are several creditors of the same class and number, they will be paid according to the dates of their claims, if evidenced by *escrituras públicas*, otherwise pro rata, judicial costs incurred following the order ascribed to the claim out of which they arose. A preference resulting from fraud between creditor and debtor is forfeited, unless the latter is alone to blame, in which event he is liable for all damages to other creditors, and to the penalty for fraud. (Arts. 1940-1943.)

Art. 725. First-class Creditors.—Out of the bankrupt estate shall be paid with absolute preference and out of any assets: 1, Court costs; 2, the expenses of preserving and administering the estate; next in order: a. The last annual and current insurance premiums on such property; b. taxes due for the last five years; 3, costs of necessary repair and reconstruction on real estate, where the debt was incurred expressly for the purpose and the amount was used in the work; 4, annuities, rents and other real obligations matured in the last five years; the preferences in clauses 1, 2 and 3 being limited to the value of the property insured, repaired or assessed for the taxes. (Arts. 1945-1946.)

Art. 726. Second-class Creditors — Lienors.—The seller of personal property has a lien (*preferencia*) on it for the price while in the hands of the debtor, if he claims it within three months after the sale, if for cash, or after it becomes due; a similar lien exists for charges for repairs when the property is in the possession of either debtor or creditor, if claimed in three months after the work was done; the lien is lost if the

property becomes impressed with the character of realty under Art. 224, or passes out of the debtor's possession. If the property is machinery or tools used in industrial establishments, and the debt is evidenced by *escritura pública*, the lien continues for one year from the date of sale.

Other liens (*preferencias*) are: That of the pledgee for the value of the pledge, where it is in his possession or lost out of it without his fault; that for the price of board and lodging upon the effects of the debtor found in the creditor's house or establishment; that for freight charges while the goods are with the carrier; that for seeds or other expenses of agriculture, upon the products in the hands of the debtor; that of the lessor of country property for the rent, losses and damages, and any other encumbrances evidenced by *escritura pública*, upon the products, and farming tools, implements and animals, and upon the rents under a subletting of the realty, if claimed within one year from the time the debt is due; that of the lessor of urban property for its rent, damages and encumbrances by *escritura*, upon the personal property of the lessee on the premises, if claimed within a year after it is due. (Arts. 1947-1955.)

Art. 727. Third-class Creditors.—Liens (*preferencias*) exist upon unmortgaged real estate and on the personal property not embraced in the foregoing Article, for: The funeral expenses of the deceased according to local custom; the expenses of his last illness not exceeding one year; for supplies furnished the debtor for the subsistence of himself and family in the six months prior to the "concourse"; for household or domestic wages in the last two years; for the debts due under clauses 5 to 9 and 11 of Art. 413, where the mortgage was not given; for taxes not assessed on mortgaged property nor otherwise preferred, as provided in Arts. 722 and 725; for the value of perishable (*fungible*) goods without marks delivered to the debtor. The creditors embraced in clauses 1 to 4 of the said Art. 413 have a lien on the

real estate therein mentioned while held by the debtor, when the mortgage has not been given. (Arts. 1956–1958.)

Art. 728. Fourth-class Creditors.—After payment of the creditors preferred in first three classes, there will then be paid: Mortgage creditors not fully satisfied from the proceeds of sale; unsecured debts evidenced by *escritura pública*; any unpaid balances on the debts preferred in the first three classes. (Arts. 1959–1961.)

Art. 729. Other Creditors.—After payment of the debts in the four preceding Articles, those evidenced by private document duly stamped will be paid; any balance will be then paid pro rata among all other creditors without regard to the dates or nature of the debts; finally any civil responsibility arising from crime or fines will be satisfied. (Arts. 1962–1964.)

CHAPTER 5.

BANKRUPTCY OF COMMERCIAL COMPANIES.

(*Código de Comercio.*)

Art. 730. Corporate and Individual Liability.

Art. 730. Corporate and Individual Liability.—Bankruptcy proceedings against the company and its members, where both are involved under Art. 704, must be separately conducted. Company creditors may make compositions with one or more of the members jointly liable, releasing them from liability and their property from the proceeding; but the bankrupt estate is not liable for the payment of such compositions, nor are such members rehabilitated until all the company debts are fully paid.

Creditors of the individual members of collective partnerships, whose claims antedate the formation of the company,

must present their claims with those of the company creditors, in the rank to which they belong, the later creditors except mortgage creditors, being only entitled to payment out of any balance after the company debts are paid. Silent members of companies *en comandita*, and stockholders in anonymous corporations, whose stock is not fully paid, may be compelled by the administrator in bankruptcy to pay in so much of their subscriptions as may be necessary, unless the shares are to bearer; and if they are creditors of the estate, their claims will only be allowed for the difference between them and the amount they owe. In the case of anonymous corporations the composition may permit the continuation or the transfer of the business on terms agreed upon.

If the company has issued securities to bearer, the holders may share in the bankrupt estate, deducting any credits to which the paper is entitled. Companies will be represented during the bankruptcy as provided in their by-laws, or in default of provision, by their directors, managers, administrators or liquidators, and if none, by an agent of the Ministerio Público other than the one designated to represent absent creditors. Art. 651 will be observed in the bankruptcy of a member of a coöperative company, in respect to the rights of heirs. (Arts. 1016, 1018–1025.)

CHAPTER 6.

(*Código de Comercio.*)

BANKRUPTCY OF RAILROAD AND PUBLIC SERVICE COMPANIES.

Art. 731. Suspension of Payments — Effects.

732. Composition — Procedure.

733. Declaration of Bankruptcy.

Art. 731. Suspension of Payments — Effects.— Railroad and other public service companies, unable to meet their obligations, may present themselves to the judge in a state

of suspension of payments, or the declaration may be made at the instance of one or more judgment creditors whose executions have been returned unsatisfied, or of creditors proving that such companies have made a general suspension of payments; but the public service of such companies must not be interrupted by the action.

The declaration has the effect of suspending "executive" and compulsory proceedings against the company; to require it to deposit the surplus, after costs of administration, operation and construction, in an institution of credit or commercial house; and to require it to present to the judge, within four months, a proposition of composition with its creditors, previously approved if it is a stock company, by a meeting of its stockholders. (Arts. 1026-1027, 1030.)

Art. 732. Composition — Procedure.— The offer of composition must be accompanied by a balance sheet of assets and liabilities; and for the purposes of composition the creditors are divided into three classes: 1, Claims due for labor, expropriation, works and material; 2, mortgage bonds issued for capital, and overdue coupons and amortization, the latter computed at their full value and the bonds at their sale price when issued, the group being divided into as many sections as there are bond-issues; 3, all other claims of every kind and order.

If the company fails to present such balance, or where the declaration is sought by creditors as above provided, the judge will order it to be presented within fifteen days, and if not so done, will make it *ex officio* within a like term and at the cost of the debtor company.

The composition is approved if accepted by creditors representing three-fifths of each of the above groups, or where a sufficient number to make up such a majority do not attend the first meeting called for the purpose, it is accepted at a second meeting by those representing two-fifths of each of said

groups, provided it is not opposed by more than two-fifths of said groups or of the total liabilities.

Within fifteen days after the approval of the composition, dissenting creditors or those not present at the meeting, may oppose it on any of the grounds stated in Art. 718; if such objections are overruled, or no opposition made, the composition is binding on the debtor and on creditors duly notified and unopposing, whose claims antedate the suspension. (Arts. 1028–1029, 1031–1033.)

Art. 733. Declaration of Bankruptcy.—The company may be declared bankrupt upon its own application, or that of a lawful creditor: 1, If it fails to present the proposition of composition within four months after the suspension of payments; 2, if the proposed composition is not approved in the time and manner above required, or is disapproved by final judgment; 3, upon the application of creditors representing one-twentieth of the liabilities, if the debtor company fails to carry out the composition agreed upon.

Upon the declaration of bankruptcy, the Government or authority which granted any concession, will be notified, and a Board of Management (*incautación*) will be organized, composed of a president appointed by said public authority, two members appointed by the company, one by each section of creditors, and three selected by a plurality of them all. This Board will provisionally organize and conduct the public service; it must deposit in some institution of credit, or commercial house in absence of the former, by way of a necessary deposit, all sums of money and securities on hand at the time, and the net surplus of earnings after deducting operating expenses; and must present all books and papers of the company whenever required. Creditors will be ranked and paid as provided in Arts. 713 and 721. (Arts. 1034–1037.)

TITLE II.

SPECIAL BANKRUPTCY PROCEDURE.¹

(*Código de Comercio*, Arts. 1415-1500.)

CHAPTER 1.

GENERAL PROVISIONS.

Art. 734. Voluntary and Involuntary Suit.

735. *Sindic* — Interventor.

736. Duties of *Sindic* and Interventors — Fees.

Art. 734. Voluntary and Involuntary Suit.— A bankruptcy suit may be initiated: 1, At the instance of the debtor, either by petitioning for a judicial liquidation, or by surrendering his assets; 2, on the petition of one or more creditors, according to clauses 1, 2 and 4 of Art. 705. (Art. 1415.)

Art. 735. *Sindic* — Interventor.— The judge having jurisdiction of the bankruptcy will take measures to preserve the bankrupt estate by appointing a provisional *sindic* (trustee) and an interventor, who must be men of known integrity and repute, and either lawyers or registered merchants. The *sindic*, provisional or definitive, will from the time of his appointment represent the bankrupt business both judicially and extrajudicially; the provisional *sindic* will simply take possession of the bankrupt business with its books and belongings, and will suspend all payments except current taxes, rents, clerk hire and minor expenses, and can only make sales for cash and at market prices; if he deems it necessary to dispose of any effects to prevent their loss or depreciation, he may be authorized by the judge after hearing of the

¹ The Procedure in cases of civil insolvency and assignments is stated in the *Código de Procedimientos Civiles*, Arts. 1559-1710.

Ministerio Público within such time as may be fixed according to the urgency of the case; neither the provisional syndic nor interventor can be removed until so resolved by a general creditors' meeting following the one held for the allowance of claims. The acceptance of the offices of provisional syndic and interventor is voluntary, but once accepted cannot be resigned without very grave cause in the opinion of the judge, who will pass on the question summarily and without other recourse than his responsibility; if for any cause either ceases to act the judge will immediately appoint another. (Arts. 1416-1421, 1424-1425.)

Art. 736. Duties of Syndic and Interventor — Fees.— The duties of the interventor are: To watch the conduct of the syndic, reporting to the judge all acts which may prejudice the interests and rights of the creditors, and taking care that his several functions are performed within the times required by law; to take part in making the inventory after the property is secured, and to be heard in cases where the syndic applies for an order to dispose of property, and whenever he proposes to bring any suit; the definitive interventor will also pass upon any claim of the syndic if he is a creditor of the bankrupt estate; for these purposes the interventors have the amplest liberty to examine the books, correspondence and other papers of the bankruptcy.

The syndic may employ a lawyer if he is not one himself and there is need of such services, whose fees duly proven and approved by the judge, will be paid from the bankrupt estate. The syndics will receive as their only compensation: 1, Eight per cent. of the proceeds of sale of the bankrupt property, if not exceeding \$25,000; 2, four per cent. on the excess up to \$200,000; 3, two per cent. on any greater excess. The provisional interventor will receive the fees fixed for attorneys by the current tariff. (Arts. 1422, 1426-1428.)

CHAPTER 2.

SECURING THE BANKRUPT PROPERTY.

Art. 737. Order of Court — Proceedings.

738. Same — Inventory.

Art. 737. Order of Court — Proceedings.— Upon the filing of a voluntary or involuntary suit in bankruptcy, the judge will make an *auto* containing: 1, The appointment of a provisional syndic and interventor, and an order for the securing of the property, books, correspondence and documents of the debtor, and an order on the post-office to deliver all his correspondence to the syndic; 2, an order prohibiting payment or delivery of goods to the debtor, under penalty of second payment, and an order to the debtor to deliver the property of the business to the syndic, under penalty of being declared guilty of concealment of property; 3, the order to publish the *auto* three consecutive times in the official newspaper of the State, District or Territory, and to register the same in the Commercial Register.

The official acting as “*ejecutor*” will immediately take the acceptance and protests of the persons appointed as syndic and interventor, and in company with them will seal the doors of the storehouses and offices of the debtor, his business books and papers, and personal property susceptible of embargo found in his residence, and will file a report in the record of having so done; all days and hours are lawful (*hábiles*) for these acts; if the debtor has branches or establishments out of the jurisdiction of the judge, the same proceedings will be taken by means of *exhortos*. (Arts. 1429–1432.)

Art. 738. Same — Inventory.— On the day after the sealing, the syndic will begin to make an inventory, after citation to the debtor and to the interventor, and before the *escribano*

of the court or some one acting for him; if this cannot be finished within the lawful hours of one day, the doors will be again sealed, and a note will be made in the record of the condition of the seal when it is again taken off; if any property is found which should be promptly disposed of, as stated in Art. 735, the proceedings therein provided will be followed; any property not subject to embargo will be delivered to the debtor. Personal property and articles necessary for the continuation of the debtor's mercantile business will be given preference in the inventory; the syndic will take charge of the property as inventoried, and will each day sign the record of the inventory, which will be made in duplicate, the original of which will be filed with the court record, and the duplicate kept by the syndic. (Arts. 1433-1436.)

CHAPTER 3.

ALLOWANCE OF CLAIMS.

Art. 739. Presentation of Claims—Time and Notice.

740. Form and Manner of Presentation.

741. First Meeting of Creditors—Proceedings.

742. Contesting Action of Creditors—Proceedings.

743. Claims Presented out of Time—Effects.

Art. 739. Presentation of Claims—Time and Notice.—

When the inventory is finished, the judge will make an order requiring creditors to present the proof of their claims; those residing within two hundred kilometers of the place of suit must present them within ten days; those within four hundred kilometers within twenty days; those residing at a greater distance, but within the Republic, must present them within thirty days; creditors residing in North America or the Antilles have two months to present their claims; those in Europe or Central America, three months; those residing in South America, four months; those residing anywhere else have five months. Notice will be given to all creditors whose

residence is known by means of a writ or *exhorto*, and to those whose residence is unknown by three consecutive publications in the official newspaper; absent creditors will be represented until they appear by an agent of the Ministerio Público. (Arts. 1437-1439.)

Art. 740. Form and Manner of Presentation.—The creditors must present to the judge within the time allowed, the documents evidencing their claims, or if there be none, an itemized account of what is due them, showing on what account, in duplicate, the original remaining on file and the copy being returned to the creditor with an endorsement of the filing of the claim. As the claims are received the judge will pass them to the *sindic*, who will compare them with the books and records of the bankrupt, and will make an entry on each claim of the result of his investigation. Within eight days from the expiration of the time allowed for presentation, the *sindic* will make up a general statement of the claims presented against the estate, numbered in the order in which they were presented, and will file the same in court, giving a copy to the debtor or his representative. In view of this report the judge will determine what creditors are entitled to vote, and for what amounts, in the examination and allowance of claims; such decision does not prejudice the rights of the creditors and of the debtor to establish their claims before the court, but in the meanwhile the creditor whose claim is not recognized has no voice in the proceedings. The judge will declare the statement of claims closed, and will fix a day, which will be the fourth day after the statement was presented, for a meeting to examine and allow the claims, and all creditors thereafter appearing will be considered in default within the terms of Art. 743. (Arts. 1440-1445.)

Art. 741. First Meeting of Creditors — Proceedings.—When the Ministerio Público and all the creditors who appear,

or their representatives with power of attorney in proper form according to the amount of the claim, are assembled on the day fixed for the meeting, the list of claims, with annexed documents, the report of the syndic on each claim, and the judge's decision, will be read, and any creditor present and the debtor or his representative may make any statements in regard to the claims; the meeting will then determine, with the approval of the judge, in regard to the exclusion of each claim; in order to exclude a claim the majority vote must consist of at least three-fourths of the creditors present with two-thirds of the claims represented, or of two-thirds of such creditors with three-fourths of the claims; otherwise the claim will be considered as allowed, unless otherwise adjudged by the court in proceedings brought as herein provided. All claims approved as above will be endorsed as "allowed," and signed by the judge and syndic; those excluded will be returned to the creditor; but a judgment creditor is entitled to vote at all meetings so long as his judgment is not reversed by final judgment. The judge will call all meetings necessary to pass on claims, but they must all be held within twenty days from the first meeting. (Arts. 1446-1450, 1461.)

Art. 742. Contesting Action of Creditors — Proceedings.

The decision of the creditors allowing or rejecting a claim does not prejudice the rights of either party, if within ten days after the vote of the creditors the party considering himself aggrieved proceeds as herein provided; after such time no contest will be admitted, nor can any creditor contest the action of the meeting if he voted in favor of it; a creditor contesting the allowance of a claim is responsible for the costs of the proceeding, but if it is excluded by the court the costs will be refunded out of the bankrupt estate. In contests by a creditor or by the debtor against the allowance of a claim, the creditor whose claim is affected is the only

party; in contests by a creditor for the allowance of a rejected claim, the *sindic* is the party who in all cases must sustain the action of the meeting on behalf of the estate.

In all cases of contest the judge will set a day within eight days after the contest is presented, for the complainant to establish his rights, which will be decided in a verbal suit with no other written record than the complaint itself and the documents and testimony of witnesses presented by the parties; the suit shall be decided within fifteen days, unless it is necessary to secure evidence which cannot be presented in that time, in which event the time may be extended not to exceed sixty days; the absence of any party shall not delay the decision, and they will be so notified on their first appearance; any recourse of appeal or nullity will be decided by the superior court in the same time and manner as in first instance; the trial judge will not suspend the proceedings except as to the point involved, and will not send up the original record until the whole suit is disposed of. (Arts. 1451-1460.)

Art. 743. Claims Presented out of Time — Effects.— Creditors may present the evidence of their claims at any time within the terms allowed in Art. 739 without losing their preference and liens, although after the *sindic* has made up the general statement; in this event the judge will refer them to the *sindic* for the purposes above stated for eight days, and upon receiving his report will decide within four days in regard to their admission to vote, and will call such meetings as are necessary to pass on the claims. Creditors not presenting the evidence of their claims within the terms above prescribed, lose all liens they may have and are reduced to the class of common creditors to receive their share in any dividends yet to be made after their claims are presented and proven, which must be done judicially at their own expense after citation and hearing of the *sindic*; if such creditors in default had no liens, they will lose one-third of what

they should receive on account of their claims, and if the whole estate has already been distributed when their claims are presented, they will not be heard. (Arts. 1462-1465.)

CHAPTER 4.

JUDICIAL LIQUIDATION AND SURRENDER OF ASSETS.

Art. 744. Judicial Liquidation — Procedure.

745. Surrender of Assets.

Art. 744. Judicial Liquidation — Procedure.— Every merchant who has *de facto* suspended payments may within three days thereafter claim the benefit of judicial liquidation; with his petition he will present an exact and detailed statement of his assets and liabilities, giving the names and addresses of his creditors and stating the reason why he suspended payments. The judge will thereupon make the order as provided in Art. 737, and the procedure hereinbefore prescribed down to the final allowance of claims will be followed; within ten days thereafter the judge will call a general meeting of creditors for the purpose of considering a composition as provided in Arts. 717 to 719; if the parties agree upon the composition, observing all the requisites prescribed by law, the proceedings are terminated, and the debtor will be put again in charge of his business and into the free possession of his property, on the terms prescribed in the agreement; but if they do not come to a settlement, the proceedings will continue until the final liquidation and payment of claims, and the creditors, by a plurality vote, will name the permanent syndic and interventor. (Arts. 1466-1471.)

Art. 745. Surrender of Assets.— The debtor whose liabilities exceed his assets must, within three days after suspension of payments, report the fact to the judge, together with a statement of assets and liabilities as in the preceding Article, and the same procedure will be observed as therein prescribed. (Arts. 1472-1473.)

CHAPTER 5.

INVOLUNTARY BANKRUPTCY. (CONCURSO NECESARIO.)

Art. 746. When Proceeding May Be Brought.

747. Defenses — Revocation.

Art. 746. When Proceeding May Be Brought.— The “*concurso necesario*” takes place when the suit is brought by one or more creditors, as provided in Art. 735; such action lies: 1, Where sufficient property of a merchant debtor is not found to satisfy the execution on a final judgment, in which case the judge, on the petition of the creditor or *ex officio*, will order bankruptcy proceedings; 2, where in an executive suit on any executionable instrument, sufficient property of the debtor is not found, or he fails to deposit or give bond for the amount of the claim; 3, where in a suit against a merchant for civil debts, sufficient property other than that embraced in his mercantile business, is not found on which either to levy execution of final judgment, or to embargo in an executive suit, or such latter property is not sufficient, and he does not deposit or give bond for the amount of the claim; 4, where a bank note has been protested for any cause other than its alleged forgery; if forgery is alleged as the reason for refusal to pay, and in the criminal proceeding brought in regard thereto it is proven and adjudged that the note was not forged, bankruptcy suit may be begun upon presentation of a certified copy of the judgment, unless at the time the criminal action was brought the bank deposited the amount of the note alleged to be forged; 5, where from the monthly statement published by a bank it appears *de facto* that it is insolvent, in which event bankruptcy will be declared on the petition of any creditor; 6, where it appears from any extraordinary examination (*corte de caja*) made at the instance of the Treasury Department that a bank is insolvent, in which event the judge

will institute bankruptcy suit upon the simple notice from the Department; 7, where the debtor absconds or conceals his property from his creditors; 8, where in the course of any suit the state of insolvency appears, in which event the trial judge, *ex officio* or at the instance of a party, must institute bankruptcy proceedings; 9, in all other cases expressly provided in the Code of Commerce. In all the foregoing instances the judge will at once make a declaration of bankruptcy and proceed as provided in Chapter 2. (Arts. 1474-1476.)

Art. 747. Defenses — Revocation.—In the other cases where the declaration of bankruptcy is asked by creditors, the judge will order notice for three days to the debtor, and if he offers proofs, time not to exceed fifteen days will be granted to receive them, whereupon the question of bankruptcy will be adjudged, from which decision only a devolutive appeal can be taken.

The merchant or company adjudged bankrupt in any of the cases in the preceding Article, may petition for the revocation of the order within three days thereafter, the petition forming a separate record with the same proceedings as stated above in this Article; but where they have filed a statement in respect to their state of bankruptcy they can not ask its revocation except for error in the appraisalment of their business. Creditors, either secured or unsecured, may also ask for the revocation of the adjudication in the same manner, although the bankrupt has filed his statement or consented to the adjudication; the adjudication cannot be revoked on account of a composition with creditors even where it is unanimous. Revocation will only be decreed where it is fully proved that the alleged bankrupt is meeting all his payments and that there is no excess of liabilities over assets which justifies bankruptcy. Upon the expiration of the time for asking revocation it will be presumed that the debtor and other parties interested have consented to the

adjudication, which is effective as of the time of suspension of payments. The adjudication having become final, liquidation will proceed as provided in Art. 744. (Arts. 1477-1484.)

CHAPTER 6.

ADMINISTRATION OF BANKRUPT ESTATE.

Art. 748. Sale of Assets — Duties of Sindic.

Art. 748. Sale of Assets — Duties of Sindic.— If the bankrupt and his creditors do not effect a composition, the trustee, assisted by the interventor, will administer the property as provided in this Book, converting the assets into cash and classifying the creditors. Within a month after it is known that there will be no composition, the trustee will if possible sell the business as a whole, or if not, the assets of the same, and if necessary at a reduction of twenty-five per cent. from the last inventory valuation, or if no inventory, from the value as appraised by a broker or merchant appointed by the judge. After the month has elapsed, the property will be sold at auction after five days' advertisement; at the first auction no bids for less than two-thirds of the appraised value will be received; any property unsold will be put up at a second auction five days later, at which no bid under forty per cent. of the appraisement will be admitted; any remaining property will be sold to the highest bidder at a third auction within ten days; all sales will be for cash, and the creditors may make bids. The proceeds of sale will be deposited in sealed sacks in a bank or the most respectable business house, and the receipt will be added to the trustee's records.

The trustee will present a schedule showing the classification of creditors within six months after the first meeting of creditors, failing to do which he will be removed and

another appointed, who must present such schedule within one month, and the first trustee will be liable for the results of his fault or negligence. If at the time of the judgment establishing the classification, any property not yet come into the estate is in litigation, the unsatisfied creditors may appoint a special trustee to terminate the suits and dispose of the property, who will receive the fees of an attorney, to be paid by the creditors appointing him. (Arts. 1485-1490.)

CHAPTER 7.

CLASSIFICATION OF CREDITORS.

Art. 749. Schedule of Creditors — Meetings.

750. Judgment of Classification — Appeals.

Art. 749. Schedule of Creditors — Meetings.— Within the month allowed in the preceding Article for the sale of assets, the syndic will prepare a schedule of classification of creditors, in accordance with Arts. 713 and 721, but including claims for labor and rolling-stock on railroads in the class covered by clause 2 of Art. 721. Upon the presentation of said schedule the judge will call a general meeting of creditors within the next ten days, in which one by one the proposals of the schedule will be considered, together with the report of the interventor on the claims of the trustee if he is a creditor of the estate; if there is any disagreement in regard to the preference of any claims, a new meeting will be called within twenty days, at which the objecting creditors may present legal arguments in writing, in view of which, or of the records of the two meetings, the judge will render the judgment of classification. Any claims which are in litigation concerning their validity, as provided in Art. 716, will continue their separate course until ready for judgment, when the parties will be cited for judgment of

classification in the bankruptcy suit, which will be rendered within not to exceed two months. (Arts. 1491-1496.)

Art. 750. Judgment of Classification — Appeals. — The judgment of classification will contain: 1, Decision as to the fact that there has been a bankruptcy, and of what kind; 2, the date of the bankruptcy; 3, the designation of lawful claims, their amount, class and classification; 4, the application of the proceeds of the bankrupt estate to the payment of claims; 5, the decision of all pending incidents.

Appeal in both effects lies from the judgment, provided that it is taken within three days by the representative of the Ministerio Público, the bankrupt, or any creditor whose claim exceeds three thousand pesos. Upon the record being filed in the appellate tribunal, the appellant and the trustee will be notified, and they may ask within three days that proof be taken, for which purpose eight days will be granted; if proof is not taken, or when it is finished, the parties will be cited for hearing within eight days, during which time the record and proofs will be subject to their inspection in the clerk's office. The decision will be rendered at the time of the hearing, no other recourse being allowed than those of cassation or nullity, which will be prosecuted in form and manner as provided by the respective laws and Code of Civil Procedure. (Arts. 1497-1500.)

BOOK XI.

CIVIL AND MERCANTILE PROCEDURE.¹

(*Código de Procedimientos Civiles*, Arts. 1-1070; *Código de Comercio*, Arts. 1049-1414.

TITLE I.

GENERAL PRACTICE ACT.

CHAPTER 1.

ACTIONS AND DEFENSES.

Art. 751. Definitions — Kinds of Actions.

752. Joinder of Actions — Filing Instruments.

753. Principal and Incidental Actions.

754. Defenses — Classification.

755. Parties — Who may Sue and Be Sued.

756. Special Mercantile Suits — Classification.

¹The Code of Civil Procedure in its terms governs ordinary civil proceedings in the several local (in distinction from Federal) Courts, of first instance and of appellate jurisdiction, in the Federal District and Territories; but its provisions are generally applicable in the courts of the several States. Book IV of the Code of Commerce, which is a Federal Statute in force throughout the Republic, governs the procedure in suits arising out of all kinds of commercial transactions, and is applied by all the local courts in the several States, District and Territories. In general terms, the provisions of the two Practice Codes are identical, or show only minor differences of detail; they are therefore usually stated together herein, attention being called to all particular points of difference.

The same remarks apply generally to the new Federal Code of Civil Procedure, of 26 December, 1908, references to which are also made whenever its special rules require notice; otherwise they are quite the

Art. 751. Definitions — Kinds of Actions.— An action is the means of enforcing in the courts the rights established by law; by reason of their object, they are: 1, Real; 2, personal; 3, of civil status. Real actions are: 1, Those having for object the recovery of specific property owned by the plaintiff; 2, those for recovery of an easement or a decree that an estate is not subject to one; 3, those for the recovery of rights of usufruct, use and habitation; 4, mortgage suits; 5, those concerning *censos*; 6, concerning pledges; 7, concerning inheritances; 8, possessory actions. Real actions may be maintained against anyone in possession.

Personal actions are those having for object the enforcement of any personal obligation, whether to give, to do or not to do anything; they can only be maintained against the person obliged, his surety, or his legal successors in the obligation.

Actions of civil status are those having for object to establish birth, death, marriage or its nullity, filiation, acknowledgment or designation of children, emancipation, guardianship, divorce and absence, or to nullify or rectify the records of the register; when this action is based on the possession of status, and is proven as provided in the Civil Code, its effect is to protect or restore the claimant's right against everyone disputing it. (Cod. Civ. Proc., Arts. 1-6, 11-12.)

Art. 752. Joinder of Actions — Filing Instruments.— A personal and a real action may be brought separately or jointly in regard to the same matter: 1, Where a mortgage or pledge has been given to guarantee a personal obligation; 2, where the party bringing the real action is also entitled to recover indemnity and interest. No real or personal action can be brought unless the instrument evidencing the same as those of the local procedure. It will be noted that the rules of civil procedure are to be followed (Art. 756), in the absence of special provisions of the Code of Commerce.

Omission is only made of such matter as is entirely details of practice and clerical routine of no general importance or interest.

right is filed with it, in all cases where the Civil Code requires the contract to be in public or private document; if not filed, the judge, under penalty of suspension from one to six months, will summarily dismiss the suit. If several actions lie against the same party, all which are not contradictory must be joined, and those not joined are extinguished. (Cod. Civ. Proc., Arts. 7-8, 22.)

Art. 753. Principal and Incidental Actions.—All actions are principal, except the following which are incidental: 1, Actions arising from an obligation which guarantees another, as that of surety, pledge or mortgage; 2, all those having for object the enforcement of civil responsibility incurred for failure to perform a contract, or for acts or omissions expressly subject to such action by law. Where the principal action is extinguished the incidental cannot be maintained, but the former may be maintained although the latter is extinguished. After answer filed, an action cannot be abandoned to bring another in the same suit (*juicio*); the party desisting will be adjudged to pay the costs, unless otherwise agreed. A right of action continues as long as the obligation on which it is founded, unless the law fixes a different time. All civil actions take the name of the contract or act out of which they arise, but may proceed to trial although its name is not expressed, provided its nature can be clearly determined. (Cod. Civ. Proc., Arts. 13-14, 21, 24-25.)

Art. 754. Defenses — Classification. — All defenses employed by the defendant to impede the course of the action or to destroy it, are called “exceptions”; the former kinds are called dilatory (pleas in abatement), and the latter peremptory (pleas in bar).

Dilatory exceptions are: 1, Want of jurisdiction (*incompetencia*); 2, former suit pending (*litispendencia*), which lies when the same cause of action for which the defendant

is sued is already pending before a competent judge; 3, want of personality, or legal capacity to sue, of the plaintiff; 4, the prematurity of the suit because the time or condition on which the action depends is not fulfilled; 5, obscurity or legal defect in the form of action; 6, "*división*"; 7, "*excusión*"; 8, personal "*arraigo*," or bond to abide the results of the suit (*estar á derecho*), when the plaintiff is a foreigner or transient; 9, other defenses characterized as dilatory by the laws. Such defenses can only be interposed in the form and time prescribed by law.

Peremptory exceptions must be pleaded at the time of answering the suit; after answer no "exceptions" will be admitted, nor can the defendant change the exception pleaded. (Cod. Civ. Proc., Arts. 26-35.)

Art. 755. Parties — Who May Sue and Be Sued.—No suit can be brought except by the party directly interested, except: 1, In cases of assignment of actions in accordance with the Civil Code; 2, in cases of absence, mandate, and voluntary administration; 3, in cases where creditors accept an inheritance as provided in the Civil Code; 4, in cases of incapacity where one person legally represents another; 5, in other cases where the law authorizes a third person to bring suit for another. In joint actions, real or personal, any of the creditors is a legal party unless the instrument filed shows that the right is reserved to some other of them. In real or personal actions of inheritance or legacy, any heir or legatee may bring suit if no interventor or administrator has been appointed, but where appointed, they alone can sue, and not an heir or legatee, unless the former being requested refuses to bring suit. Anyone may renounce his right or action except as provided by law.

Heirs are only liable in actions transmitted against them in proportion to their shares, except where they are jointly liable with the ancestor, or because of concealment of assets, failure or delay in making inventory, and fraud in admin-

istration of the property; penal actions arising from contract are transmissible in favor of and against heirs as provided in the Civil Code. No one is obliged to begin or prosecute an action against his will, except: 1, Where one boasts publicly that another is his debtor, or that he has rights to something which the latter possesses, in which case the latter may appear before the judge of his own domicile, and have him fix a time within which the boaster must bring the suit which he claims to have or be debarred from such action; one is not reputed a boaster who in any judicial or administrative act reserves any rights he may have against another or about anything; 2, where in certain cases a third party has intervened and on the transfer of the case to another court does not appear to prosecute his intervention. (Cod. Civ. Proc., Arts. 15-20, 23.)

Art. 756. Special Mercantile Suits — Classification.— Mercantile suits are those having for their object to decide controversies arising from commercial transactions as defined by the Code of Commerce. Where one of the parties to a contract performs in executing it an “act of commerce” as therein defined, and the other a merely civil act, if the former is sued, the suit must conform to the special procedure of the Code of Commerce, otherwise the ordinary rules of procedure apply to the case. The conventional mercantile procedure is preferable; if there is no agreement of the parties, the procedure prescribed in the Code of Commerce will be followed, and in absence of such those of the local procedure.

The judges are bound to follow the conventional procedure agreed to by the parties, if the following conditions concur: 1, That the agreement was made in a public instrument, in a broker’s policy, or before the judge trying the case at any stage of the suit; 2, that the essential features of a suit, which are the demand, answer, and where necessary, the proofs, are preserved; 3, that proofs not admissible ac-

according to law are not agreed to be admitted; 4, that the jurisdiction and gradation of courts is not affected; 5, that the terms provided by law for decision are not shortened; 6, that other and different recourses than allowed by law, according to the nature and amount of the case, are not stipulated. The agreement under clause 1, to be valid, must contain: 1, The names of the parties; 2, their capacity to bind themselves; 3, the character in which they contract; 4, their domiciles; 5, the subject-matter of the agreed procedure; 6, the means of proof which is to be followed; 7, what kinds of proofs, if any, are waived; 8, what legal recourses, if any, are waived; 9, what judge or arbitrator is to hear and decide the case.

Mercantile suits are: 1, Ordinary; 2, executive; 3, special bankruptcy. All must be formulated in writing; those of minor amount, which are those involving not more than two hundred pesos, will only be stamped as required for verbal suits. (Cod. Com., Arts. 1049-1055.)

CHAPTER 2.

PERSONALITY OF LITIGANTS.

Art. 757. Parties — How Represented.

758. Same — Absentees.

759. Joint Representation.

760. Filing Powers and Copies.

761. Judicial Formalities.

762. Judicial Decisions — When Rendered.

763. Notifications — How Served.

764. Same — Unknown and Non-resident Parties.

765. Subsequent Notifications — General Rules.

Art. 757. Parties — How Represented.— Everyone in the full exercise of his rights may appear in suit; those under disability must appear by their lawful representatives or those who must act for them according to law; absent and unknown persons will be represented as provided in the

Civil Code; parties and their lawful representatives may appear in person or by attorney with sufficient power of attorney. (Cod. Civ. Proc., Arts. 36–38.)

Art. 758. Same — Absentees.— A party absent from the jurisdiction, and having no one to legally represent him, must be cited as hereinafter prescribed, but if the matter is urgent and delay prejudicial in the opinion of the judge, the absentee may be represented by the Ministerio Público; if any capable person should appear for the absentee, he will be recognized as a “volunteer attorney” (*gestor judicial*), upon giving bond, to be approved by the judge after hearing the other party, that the absentee will ratify his actions, and that the volunteer will pay any judgment and satisfy any damages caused; he must also renounce all legal benefits, as provided in Art. 401. A *gestor* cannot represent a plaintiff. (Civ. Proc., Arts. 39–43; Cod. Com., Arts. 1056–1059.)

Art. 759. Joint Representation.— Where two or more persons bring the same action or make the same defense, they must do so jointly and with the same representative, for which purpose they must, within three days, appoint an attorney with the necessary powers, to represent them all, or select one of their number as a common representative; if they fail to do so, the judge will appoint one of them as common representative. The attorney shall have such powers as are conferred in his power-of-attorney; the common representative has all powers as if he were the only party in his own right, except to compromise and submit to arbitration, unless the parties confer these powers. (Civ. Proc., Art. 44; Cod. Com., Art. 1060.)

Art. 760. Filing Powers and Copies.— The first pleading (*escrito*) must be accompanied by: 1, The document or documents accrediting the character in which the party appears in the suit, if representing any other person or corporation,

or when the right which he claims was transmitted from some other person; 2, the power of attorney accrediting the attorney when one appears; 3, a copy, on common (unstamped) paper, of the first and all other pleadings, and of the documents, if not of more than twenty-five pages; if more, they will remain in the *secretaría* (clerk's office) for the use of the parties; if such copies are not filed, the pleadings will not be accepted.

Summons, notifications and citations of all kinds served on the attorney have the same force as if served on his client and he cannot refuse such service. (Civ. Proc., Arts. 45-50; Cod. Com., Arts. 1061-1062.)

Art. 761. Judicial Formalities. — Judicial proceedings must be conducted on lawful days and hours (*días hábiles*), or they are void; all the days of the year are lawful except February 5th, May 5th, September 16th and Sundays; lawful hours are those between sunrise and sunset; the judge may legalize unlawful days and hours for urgent cause requiring it, expressing the cause and what acts are to be done. All judicial proceedings, and all pleadings and writs must be written on paper stamped according to law, with a margin of one-fourth the width, and with an edge for sewing; all dates and amounts must be written in words; in no case can abbreviations be employed, nor erroneous words erased, but a light line will be drawn through them permitting them to be read, and mention made of every error at the end; every infraction of these requirements being subject to fine of from ten to one hundred pesos, besides the penalties imposed by the Penal Code. The secretary must note the day and hour that a pleading is presented, acting upon it within twenty-four hours at the latest, under penalty of ten pesos fine besides others imposed by law. The records (*autos*) will only be delivered to the parties in order to prepare arguments or to make up or audit accounts, and only when jointly requested; the records and copies will be deliv-

ered by the secretary directly to the parties upon receipt signed by them; except in the above instances, the phrase, "*dar ó correr traslado,*" only means: That the records are in the *secretaría*, so that the interested parties may examine them or get the copies.

Lost records must be replaced at the cost of the party responsible for their loss, who must also pay all damages caused, and is liable to criminal penalties in the proper cases. Copies or *testimonios* of any document in the archives or protocols can only be had by order of court, upon cause shown, and hearing the opposite party or the Ministerio Público.

All judicial acts formerly performed under oath, will be performed under "protest to say the truth." (Civ. Proc., Arts. 51-65; Cod. Com., Arts. 1063-1067.)

Art. 762. Judicial Decision — When Rendered.— Judicial decisions are divided into: 1, Simple determinations of procedure, called *decretos*, and will be signed by the half-name of the judge and of the secretary; 2, decisions in regard to matters not of simple procedure, which are called *autos*, which must contain the legal provisions on which they are based, and will be signed by the half-name of the judge and the whole name of secretary; 3, *sentencias*, or judgments, final and interlocutory, which must be signed by the whole name of judge and secretary. Unless other terms are fixed by law, *decretos* must be rendered within three days after the last proceeding; *autos* within eight, and *sentencias* within fifteen. (Cod. Civ. Proc., Arts. 66-69.)

Art. 763. Notifications — How Served.— Service of notifications, citations, and delivery of papers must be made at the latest on the day after the decision is rendered, unless otherwise directed therein by the judge, under penalty of a fine of twenty pesos. All parties litigant must, in the first pleading or first judicial act, designate a house in the place of suit where notifications may be made and other proceedings

had as to them, also a like place for the first notification to the opposite party; otherwise, in commercial suits, the courtroom will be the place for all such proceedings; in civil suits, if the party fails to designate a place for notifications to himself, they will be made as in cases of subsequent notices, and if he fails to designate the place for notifications to the opposite party, no notification will be served until the omission is supplied. The first notification will be made personally by the *escribano* or *comisario* to the interested party; if he is not found on the first call, a *citatorio* is left for him fixing an hour within the next twenty-four, and if he does not wait, the notification will be made by *instructivo*, reciting the name of the opposite party, the judge or court making the order, the subject-matter of the notification, the day and hour on which it is left, and the name of the person to whom it is delivered; the *instructivo* will be delivered to the relatives or servants of the party or to any person who lives in the house, after the officer has ascertained that the party to be notified lives there, and he will state all the circumstances in the return; the *instructivo* giving notice of a suit will contain a brief statement of the demand. (Civ. Proc., Arts. 70-74; Cod. Com., Arts. 1068-1069.)

Art. 764. Same — Unknown and Non-Resident Parties.—

Where the residence of the party to be notified is unknown, the first notification will be made by publication of the order, in commercial cases, for three consecutive times in the official newspaper of the State, District or Territory where the defendant merchant is subject to be sued; and in civil cases, the publication must be made fifteen consecutive times in the *Boletín Judicial* and three other papers of largest circulation in the opinion of the judge, besides observing the provisions of the Civil Code in respect of absent and unknown persons, and if the civil notification is a summons to appear in suit, it can only be made as provided in the preceding Article in regard to *citatorio* and *instructivo*.

Where the party to be notified in either commercial or civil suit resides outside the place of suit, the notification or citation must be made by a writ (*exhorto* or *despacho*) to the judge of the place where he resides. Where the writ must be sent to the judge or court of another State, the signatures must be legalized, in commercial cases, by the Governor of the State or Federal District, or by the *Jefe Político* of the Territory, and in civil cases by the superior political authority of the District or Territory, who will forward it to the like official in the other jurisdiction, who will remit it to the proper judge or court. If the service is to be had in a foreign country, it will be sent, after being properly legalized as above (and, in civil cases, by the Minister of Justice, who will legalize all preceding signatures), to the Minister of Foreign Relations, who will legalize the antecedent signatures, and forward it to the minister or consul, if any, or if none, to the minister or consul of some other country which has relations with Mexico, in the country where it is to be served, observing in all cases the provisions of treaties or international law. (Cod. Com., Arts. 1070-1074; Civ. Proc., Arts. 75-80.)

Art. 765. Subsequent Notifications — General Rules.— The second and subsequent notifications must be made personally by the *escribano* to the parties or to their attorneys, if they come into the court, on the same day that the order is made, from ten till one o'clock, on the second day from eight till one o'clock, and on the third day before noon, and if they do not so appear by noon of the third day, the notification will be taken as made for all legal purposes, such fact being noted in the record. All notifications must be signed by the person serving them and by the party served, and if the latter does not sign, the officer will sign for him, stating that fact; a simple copy of the notification will be given the party served if he so requests. If there is no *Boletín Judicial* in the place of suit, the publications will be made in the official daily news-

paper, and if none, the notifications will be made by the *escribano* or *comisario*.

In no case can notices be served on lawyers (*abogados*) unless they are also attorneys (*procuradores*), or the parties agree of record that they may be so served. Judgments and other judicial orders are not to be taken as consented to, unless the party, upon being notified, expresses his consent; if he simply answers to the notification, "that he hears it" (*que lo oye*), he does not lose the right to interpose, within the legal term, any recourse he may have. Notifications made otherwise than as herein prescribed are void, and the officer making them incurs a fine of from ten to twenty pesos, and is liable for all damages and costs, and the party aggrieved may proceed before the judge conducting the case to have all subsequent proceedings declared void, unless he has manifested, in the suit, that he knew of the matter notified, in which case the notification will have the same effect as if legally made. (Civ. Proc., Arts. 81-99.)

CHAPTER 3.

JUDICIAL TERMS.

Art. 766. Terms — How Computed.

767. Terms not subject to Extension.

768. Terms for certain Proceedings.

769. Dispatch of Business — Costs.

Art. 766. Terms — How Computed.— Judicial terms begin to run from the day after that on which the summons, citation or notification was made, the last day being counted in computing the term, except as otherwise provided by law, but excluding all days on which legal business cannot be conducted. If there are several parties, and the term is common to all, it will be computed as above from the day after all have been notified. All judicial documents and orders will recite the day of the beginning and end of any term or

extension of time, under penalty of fine of ten pesos and all damages and costs against the secretary. All terms may be extended unless expressly prohibited; but no extension will be granted unless requested before its expiration, and after hearing the opposite party, and subject to the same recourses available against the granting or denial of the original term. All terms and extensions are common to both parties; no extension can exceed the time prescribed for the original term; terms will be computed according to the provisions of the Civil Code for computation of time. (Civ. Proc., Arts. 100-109, 114; Cod. Com., Arts. 1075-1076.)

Art. 767. Terms not Subject to Extension.—The terms prescribed for the following proceedings cannot be extended: 1, To appear to the suit; 2, to interpose dilatory defenses (*excepciones*); 3, to ask the revocation and reinstating of unappealable decrees and *autos*; 4, to oppose execution; 5, to ask the explanation (*aclaración*) of a judgment; 6, to appeal and to appear in the superior tribunals; 7, to interpose the recourse of cassation; 8, to interpose the recourses of “denied appeal” and cassation; 9, to appear in the superior tribunals to prosecute the foregoing recourses; 10, all others expressly provided by law, or in respect to which it is declared that after their expiration the action, defense, recourse or right conceded cannot be exercised. Unextendable terms commence to run from the day of notification, which is counted as a whole day irrespective of the hour when the notification is made; when once complete, they cannot be suspended or reopened for any reason. (Civ. Proc., Arts. 110-111; Cod. Com., Art. 1077.)

Art. 768. Terms for Certain Proceedings.—Where the law does not prescribe a term for some judicial proceeding or for the exercise of some right, it must be done within the following terms: 1, Ten days, in the discretion of the judge, for proofs; 2, nine days to exercise the *derecho del tanto*; 3, eight

days to interpose the recourse of cassation; 4, six days to make and prove impeachment (*tachas*) of witnesses; 5, five days to appeal from a final judgment; 6, three days to appeal from an *auto* or interlocutory judgment; 7, three days for the holding of meetings, acknowledgment of signatures, confession, interrogatories, acclarations, exhibition of documents, expert proofs, and other steps of procedure, unless for special circumstances the judge deems it just to amplify the term; 8, three days for all other cases. (Civ. Proc., Art. 115; Cod. Com., Art. 1079.)

Art. 769. Dispatch of Business — Costs.— The hearing (*vistas*) of suits shall be public, in inferior and superior courts, except in divorce cases, and others which in the discretion of the court should be heard privately in the interest of good customs; the decision (*acuerdo*) and taking of proofs shall be private unless otherwise provided by law. The courts will never admit notoriously frivolous and improper proceedings, but will reject them summarily, without notice to the other party, besides imposing the penalty prescribed by the Penal Code. The judges and courts may order the production of any document desirable to ascertain the rights of the parties, if there is no legal reason to the contrary; order any inspection or appraisement deemed necessary, and consult any court records which may have relation with the suit, observing the legal rules in respect to proofs; and may, at any stage of the proceedings, cite the parties to meetings, to secure their agreement or to clarify any point, without suspending any terms running; such meetings, and all other proceedings (*diligencias*), will be held in the court, unless for good cause the judge designates another place.

Costs shall not be collected for any judicial act, not even where “attendant witnesses” are required or the proceedings must be had outside the place of suit. Each party is directly liable for the costs he occasions, and the other party will indemnify him for the expenditures if costs are adjudged

against him. Costs will be adjudged when the law so provides and when in the opinion of the judge a party has acted in contempt or bad faith; costs will always be adjudged against a party: 1, Who fails to produce proof to sustain his action or defense founded on disputed facts; 2, who presents false documents or false or suborned witnesses; 3, against the losing party in executive suits and in actions regarding mortgages, *amparo* and spoliation; 4, who has judgment twice against him on the same point. Parties may secure leave, on account of poverty, to litigate without other costs than 5ct. stamp on each page of their documents, subject to be paid at the full rate if they come in possession of means. (Civ. Proc., Arts. 116–117, 125, 128–129, 141–143, 290–304; Cod. Com. Arts. 1080–1085.)

CHAPTER 4.

COMPETENCY OF JUDGES AND COURTS.

Art. 770. Jurisdiction — General Rules.

771. Same — Rules for Determining.

Art. 770. Jurisdiction — General Rules.— Every suit must be brought before a competent judge; if there are several in the place where suit is to be brought the plaintiff may select any one. A judge to whom the parties expressly or tacitly submit themselves is competent; express submission occurs where the parties definitely renounce the jurisdiction granted by law and distinctly designate the judge to whom they submit the cause, which may be done in the contract in suit; special power is required by an attorney to make an express submission, but jurisdiction cannot be conferred by consent on a judge who has not powers of the same kind. Tacit submission occurs: 1, By the plaintiff, in bringing suit before the certain judge; 2, by the defendant, in pleading in any way in the suit, unless he expressly reserves the right

of exception or denies jurisdiction; 3, by the defendant in an executive, mortgage or summary suit, if within three days after the first proceeding, he does not except as above; 4, where objection is made and withdrawn; 5, by a third party, by intervening in any way in the suit. Every act done by a judge declared incompetent or who has disqualified, is void; all such acts are contrary to law, and render the judge personally liable for damages.² (Civ. Proc., Arts. 150-151, 154-159, 184; Cod. Com., Arts. 1090-1095.)

Art. 771. Same — Rules for Determining.— Whatever the nature of the suit, the judge is to be preferred: 1, The judge of the place designated by the debtor as the place of suit; 2, the judge of the place designated in the contract for its performance; if no designation was made, the judge of the debtor's domicile is competent in all actions; if the debtor has several domiciles, the creditor may sue in either; if the debtor has no fixed domicile, he may be sued in personal actions, at the place where the contract was executed, and in real actions, in the place where the property is; if there are several objects of a real action, located in different places or jurisdictions, the suit may be brought in any of them where the plaintiff first sues; suits concerning rents and leases will be brought where the property is located, unless otherwise provided in the contract; bankruptcy suits should be brought at the domicile of the debtor; in cases of absence legally established, at the last domicile of the absentee, or if that is unknown, at the place where most of his property is; in other cases of voluntary jurisdiction, the judge of the plaintiff's domicile is competent; in pre-judicial matters the judge who would have jurisdiction of the principal cause is competent, and in urgent cases of precautionary procedure, the judge of the place where the defendant is found or the property to be secured lies, is competent.³ (Civ. Proc., Arts. 185-190, 194, 201, 203-204; Cod. Com., Arts. 1104-1112.)

² The procedure of contesting jurisdiction is omitted.

³ Other details of jurisdiction in particular cases are omitted.

CHAPTER 5.

CHALLENGE AND DISQUALIFICATION OF JUDGES.

Art. 772. Compulsory Disqualification.

773. Challenges and Excuses.

Art. 772. Compulsory Disqualification.—Every magistrate and judge is obliged to disqualify himself to act in any of the following cases, and such disqualification cannot be waived by consent of both parties: 1, Where he has direct or indirect interest in the subject-matter; 2, where his consanguineous relatives in right line without limitation of degrees, his collateral relatives within the fourth degree, and his affines within the second degree, both inclusive, are directly or indirectly interested in the matter; 3, where the judge or his relatives as above have pending a suit similar to the one in question; 4, where there is between the judge and any party a relation of intimacy arising from civil or religious act sanctioned or respected by custom; 5, where the judge is at the time a partner, lessee or dependent of any of the parties; 6, if he has been guardian or curator of any of the parties or at present in administration of his property; 7, where he is heir, legatee or donee of any of the parties; 8, if the judge, his wife or children are debtors or sureties of any of the parties; 9, where the judge has been lawyer, attorney, expert or witness in the case; 10, where he has acted in the case as judge, arbitrator or assessor, deciding any material point in the case; 11, wherever he has for any reason expressed his opinion before making his decision; 12, if he is related by consanguinity or affinity to the lawyer or attorney of either party in the above degrees. Judges and magistrates are bound on their responsibility, to disqualify themselves in any of the foregoing cases although neither party challenges them. Simple grounds of challenge may be waived by consent. (Civ. Proc., Arts. 233–236; Cod. Com., Arts. 1132–1133.)

Art. 773. Challenges and Excuses.— Besides the foregoing impediments, which are of course grounds of challenge, there are other grounds of challenge and of excuse of the judge, which being wholly matters of practice of no general concern, are omitted. (Civ. Proc., Arts. 237–289; Cod. Com., Arts. 1134–1150.)

CHAPTER 6.

PREPARATORY AND PRECAUTIONARY PROCEDURE.

Art. 774. How Prepared for Suit.

775. Precautionary Measures.

Art. 774. How Prepared for Suit.— A party having a suit to bring against another, may prepare for bringing the same: 1, By requiring the other party to answer under protest to any matter relating to his personality; 2, by requiring the exhibition of any personal property which is to be the object of a real action; 3, by the purchaser requiring the seller, or the seller requiring the purchaser in case of eviction, to exhibit the title papers or other documents relating to the property sold; 4, by one partner or joint owner requiring the other to produce the documents and accounts of the partnership or co-tenancy; 5, the production of a will, by anyone claiming a right under it; 6, the exhibition of the things by anyone having a right to select one of them; in the case of clause 1, the interrogatories must be strictly limited to the personality of the party and cannot concern the merits of the case. Depositions of witnesses may also be taken preparatory to suit, when they are of advanced age or in imminent danger of death or about to go away to a place with which communication is slow or difficult, and the suit cannot yet be begun because the time or condition on which it depends is not yet fulfilled; such depositions may also be taken in the above circumstances to prove any defense, where the proof is indis-

pensable. Except in the above cases no other proceedings for taking proofs before suit can be had, and if had the proofs cannot be used in the suit. The action to require the exhibition of any thing lies against anyone having it in his possession; the others will be begun by citation to the opposite party; if he fails to appear, the matter will proceed by default, but the representative of the Ministerio Público will be called in. The executive action may be prepared by requiring the acknowledgment of signatures to mercantile documents; if the debtor refuses to acknowledge his signature, it will be taken as acknowledged where he has been cited twice to acknowledge it and does not appear, or being required twice in the same proceeding refuses to answer whether it is his signature or not. (Civ. Proc., Arts. 305-307, 311-317, 325; Cod. Com., Arts. 1151-1153, 1155-1159, 1167.)

Art. 775. Precautionary Measures.— These may be adopted where: 1, It is feared that the person against whom suit has been or is to be brought may absent or conceal himself; 2, or conceal or damage property subject to a real action; 3, or, in a personal action, where the debtor has no other property than that which is the object to the process, and it is feared that he will conceal or dispose of it; these provisions apply not only to debtors, but to guardians, partners and administrators of the property of others, and may be decreed either before or pending the suit. Where the process is applied for after suit brought, it will be prosecuted as an incident to the principal suit and before the same judge; it shall consist exclusively, under clause 1, of the restraint of the person (*arraigo*), and in the attachment (*sequestro*) of property under clauses 2 and 3; the party asking it must prove his right to act and the necessity for the remedy sought, by documents or by at least three witnesses. In case of *arraigo* to answer suit, the defendant will simply be warned not to leave the place of suit without appointing a lawful representative properly instructed and provided with funds to meet the

results of the suit. If the *arraigo* is asked before suit brought, the plaintiff, besides the proofs above required, must give bond, to be fixed by the judge, to respond to all damages which may result if suit is not brought; a party violating the *arraigo* incurs the penalties prescribed by the Penal Code, and may be compelled to return to the place of suit.

Where provisional *sequestro* is asked, the value of the demand or of the thing claimed must be stated and the thing clearly described; and where the demand is not based on an executive instrument, the plaintiff must give bond to respond for all damages resulting upon dissolution of the attachment or judgment for the defendant. If the defendant delivers up the amount or thing claimed, or gives bond satisfactory to the judge, or proves that he has real estate sufficient to answer for any judgment, the *sequestro* will be withheld or recalled. Before making the precautionary order the person against whom it is sought will not be cited; the party asking it is liable for all damages caused; no defenses are admitted against carrying out the order; the procedure applicable to executive actions will be observed in the attachment and delivery of property.

The party securing the order must file suit within three days after its execution, if to be brought in the same place; if in another place, one additional day will be allowed for each twenty kilometers or fraction under ten; otherwise the order will be revoked on motion of the defendant. (Civ. Proc., Arts. 326-346; Cod. Com., Arts. 1168-1186.)

CHAPTER 7.

EVIDENCE. (PRUEBAS.)

Art. 776. Proofs — General Rules.

777. Confession — Testimony of Parties.

778. Instruments and Documents — Definitions.

- 779. Authentication of Documents.

780. Same — Foreign Documents.

- Art. 781. Foreign Language — Translations.
 782. Documentary Evidence — Sundry Rules.
 783. Production of Documents.
 784. Comparison of Handwriting — Experts.
 785. Expert Testimony.
 786. Witnesses — Qualifications.
 787. Testimony — How Taken.
 788. Public Fame — When Admissible.
 789. Presumptions — Kinds and Effect.
 790. The Value of Proofs — Probative Force.
 791. Same — Public and Private Instruments and Records.
 792. Testimonial Proofs — Weight of Evidence.
 793. Same — Merchant's Account Books.

Art. 776. Proofs — General Rules.— He who affirms must prove; hence the plaintiff (*actor*) must prove his action and the defendant (*reo*) his defense; he who denies is not bound to prove unless the negation involves an express affirmation of fact; he is also bound to make proof when by his denial he disaffirms (*desconoce*) the legal presumption which his co-litigant has in his favor. Only facts are subject to proof; law (*derecho*) has only to be proven when it is founded on foreign laws (*leyes*), and the party who invokes them must prove their existence and that they are applicable to the case.

The judge must receive all proofs offered except such as are contrary to law and morals; he will receive proofs where the parties request it or he deems it necessary, but proofs can only be taken within the probatory term, under penalty of nullity and responsibility of the judge, except where due to causes beyond the control of the parties, except as otherwise provided. Notice of taking proofs will be given the opposite party, except as regards confessions, acknowledgment of the books and papers of the parties, and of public instruments, at least one day previously to taking them.

The law recognizes as means of proof: 1, Confession, whether judicial or extra-judicial; 2, public and solemn instruments; 3, private documents; 4, opinions of experts; 5, judicial examination or inspection; 6, witnesses; 7, public fame; 8, presumptions. (Civ. Proc., Arts. 354–358, 361,

365-366, 373-375; Cod. Com., Arts. 1194-1199, 1201-1206.)

Art. 777. Confession — Testimony of Parties.— Judicial confession is that made before a competent judge, either in answer to the suit or in testifying; that made before an incompetent judge is extra-judicial. Every litigant is bound to testify under protest, at any stage of the case from answer to citation for final judgment, but in regard only to personal matters (*hechos propios*); in like manner interrogatories may be propounded (*articularse posiciones*) to lawyers and attorneys in regard to personal matters related with the suit; a lawyer may not be interrogated in regard to the affairs of his client, but an attorney with special power to answer (*absolver posiciones*) them may be interrogated; the party must testify (*absolver*) personally when required by the opposite party, or when his attorney does not know the facts; an assignee is considered as the attorney-in-fact of his assignor for the above purpose. A judicial confession is only effective so far as against the interest of the party making it, and not in his favor. The interrogatories (*posiciones*) must be stated in precise terms, each relating to a single fact, personal to the party testifying; the answers must be affirmative or negative, the party adding any explanations he may wish to give or for which the judge asks. The interrogatories will be taken as confessed, if the party fails to appear to the second citation without good cause; where he refuses to testify, or persists in answering otherwise than affirmatively or negatively. (Civ. Proc., Arts. 401-408, 412, 415, 424, 430; Cod. Com., Arts. 1211-1218, 1228, 1232.)

Art. 778. Instruments and Documents — Definitions.— Public instruments are: All those recognized as such by the laws, and broker's policies of commercial contracts as provided in the Code of Commerce; also: 1, Certified copies (*testimonios*) of *escrituras públicas* executed according to

law; 2, authentic documents issued by public officials in the discharge of their duties; 3, authentic documents, books of minutes and by-laws, registers and land-records in the public archives; 4, certificates of records existing in the parochial archives in regard to acts before the establishment of the civil register; 5, certificates of entries in the public registers issued in conformity with the Civil Code; 6, judicial proceedings of all kinds. A *testimonio* is the first copy of an *escritura pública* issued by the notary before whom it was executed, and subsequent copies issued by judicial order upon notice to the parties. An authentic instrument is one authorized and signed by a public officer having a right to certify, and bearing the seal or stamp of his office. A private document is one not having the foregoing requisites; only the person who signed or directed the making of a private instrument, or his lawful representative with special power, can acknowledge it, except as provided in Art. 538. (Civ. Proc., Arts. 439-442, 449-450; Cod. Com., Arts. 1237-1238, 1245.)

Art. 779. Authentication of Documents.— Authentic instruments issued under the Code of Commerce by the Federal authorities shall be given faith and credit throughout the Republic without need of legalization; those so issued under the Code of Procedure have like effect in the District and Territories without legalization. Authentic instruments issued under the Code of Commerce by local authorities must be legalized by the Governor of the State or Federal District, or by the *Jefe Politico* of the Territory, as the case may be; those issued under the Code of Civil Procedure by State officials will be given credit if legalized by the Governor of the District or State, or by the superior political authority of the Territory. (Civ. Proc., Arts. 452-454; Cod. Com., Arts. 1246-1247.)

Art. 780. Same — Foreign Documents.— All instruments

coming from a foreign country, in order to be given faith and credit in the States, District and Territories, must be legalized by the Mexican minister or consul resident in the country where the same are executed, or if there is none, by the minister or consul of a nation which has a treaty of friendship with Mexico; in the first instance, the signature of the Mexican minister or consul will be legalized by the "*oficial mayor*" of the Mexican Ministry of Foreign Relations; in the second instance, the signature of the minister or consul of the friendly nation will be legalized by the minister or consul of such country resident in Mexico, and that of the latter by the "*oficial mayor*" of the Mexican Department of Relations. (Civ. Proc., Arts. 455-457; Cod. Com., Arts. 1248-1250.)

Art. 781. Foreign Language — Translations.— All documents written in a foreign language must be presented in the original accompanied by their translations into Spanish; if the opposite party makes no objection, the translation will be accepted; if he makes objection, the judge will appoint a translator. (Civ. Proc., Art. 458.)

Art. 782. Documentary Evidence — Sundry Rules.— Where one party litigant requires a copy of a part of a document or record existing in the public archives, the other party has the right, at his cost, to have any other parts which he deems material, added thereto. Copies of documents existing in a different district will be issued upon the written order (*exhorto*) of the judge of the place of suit directed to the judge of the place where the documents are. Private documents and correspondence proceeding from one party and presented by the other, must be acknowledged by the former before being accepted in evidence; a private document can only be acknowledged by the person who signed it or directed it to be made, or by their lawful representative with special power or clause. For the purpose of acknowledg-

ment, the entire originals, and not the signature alone, will be shown him; if he could not sign, or another had signed for him, he will be advised of the contents; the general rules relating to judicial confession will be observed in regard to the acknowledgment. Private documents offered in evidence and not objected to by the other party, will be admitted and have the same effect as if acknowledged. Where one party maintains the falsity of any document which may be of important effect in the suit, the provisions of the Code of Penal Procedure will be observed. Civ. Proc., Arts. 443-448, 451-467; Cod. Com., Arts. 1239-1245, 1251.)

Art. 783. Production of Documents.—Where a certified copy is required of private documents in the possession of private persons, they must be presented to the secretary of the court, who after citation to the parties, will certify such parts as they may indicate. Persons who are not parties to the litigation will not be obliged to exhibit private documents belonging exclusively to them, except in special proceedings brought for that purpose by the party having need of them. If the documents do not belong to the person having them in possession, but to one of the litigants, their production may be compelled and copies made, the originals being returned. If the document is in the books or papers of a commercial house, or of any industrial or mining concern, the party asking for the document or record must specify precisely what it is, and the certified copy will be made in the office of the establishment, without requiring the directors to carry their account books to the court or to do more than present the records or documents designated. (Civ. Proc., Arts. 459-462.)

Art. 784. Comparison of Handwriting — Experts.—Whenever the authenticity of a private document is questioned, the comparison of the handwriting may be required, the

experts in such case observing the rules in regard to expert evidence. The person calling for the comparison will indicate the unquestioned documents by which the comparison is to be made; for such purpose the following are unquestioned: 1, Documents which both parties recognize as such; 2, private documents the handwriting or signature of which has been acknowledged in a lawsuit by the party denying the one in question; 3, such parts of the writing in dispute as are admitted by the party sought to be charged; 4, signatures put to public instruments and judicial proceedings, in the presence of the secretary or chief official, as the case may be, by the party whose writing is to be proven. After hearing the experts, the judge must himself make the verification, not being bound by the opinion of the experts, and he may order the comparison to be repeated by other experts. (Civ. Proc., Arts. 463-466.)

Art. 785. Experts — Expert Testimony.—The opinions of experts will be taken in matters relating to any art or science or whenever the law expressly provides; the experts must have diploma in the art or science about which they are to give their opinion, if the same is legally regulated; if it is not, or if there are no experts in the place, any intelligent persons may be appointed. Each party, or his lawful representative will name one expert, unless they agree to have only one, and they will jointly select a third for the event of disagreement between the others; if the parties cannot agree upon the experts the judge will appoint them. The expert named by the judge may be challenged (*récusado*), upon cause shown within 48 hours after notice to the parties of his appointment; legal causes of challenge are: consanguinity within the fourth degree; having served the opposing party as expert; having a direct or indirect interest in the lawsuit or in a similar one; having an interest in any company, establishment or enterprise against which the party making the challenge is in litigation; open enmity; intimate friendship. The fees of

each expert will be paid by the party naming him, and those of the third expert by both parties, subject to recovery by the successful party in the judgment awarding costs. (Civ. Proc., Arts. 468-474, 489-490, 495; Cod. Com., Arts. 1252-1255.)

Art. 786. Witnesses — Disqualifications.— Everyone not disqualified is obliged to testify as a witness; the following cannot be witnesses: 1, Minors under fourteen years, except in cases of absolute necessity in the opinion of the judge; 2, insane and idiots; 3, habitual drunkards; 4, one who has been adjudged a false witness or forger; 5, professional gamblers; 6, relatives by consanguinity within the fourth degree and by affinity within the second degree, except where the case involves age, relationship, filiation, divorce or nullity of marriage; 7, husband or wife in favor of the other; 8, those who have a direct or indirect interest in the lawsuit; 9, those who live at the expense or in the pay of the party offering them, except in divorce cases, in which cases they may testify, but the judge will credit their evidence according to circumstances; 10, a deadly enemy; 11, the judge in the suit which he is trying; 12, lawyers and attorneys in cases in which they are or have been employed; 13, guardians and curators for minors, and the latter for the former, unless their accounts have been approved. (Civ. Proc., Arts. 503-504; Cod. Com., Arts. 1261-1262.)

Art. 787. Testimony — How Taken.— The examination of witnesses will be upon interrogatories presented by the parties; no day for taking their evidence will be fixed until the interrogatories and copies of same are presented: the parties may present further interrogatories (*re-preguntas*) before the examination; all questions must be framed in clear and concise terms, and each refer to only one fact; no evidence will be heard in regard to matters judicially confessed, on the part of the party confessing. The testimony of old

men over seventy, of sick persons and women, may in the discretion of the judge, be taken in their homes; the testimony of the President, ministers, senators, deputies, magistrates, judges, generals in command, superior chiefs of general offices, Governors of States or of the Federal District, and *Jefes Políticos* of Territories, must be requested by letters rogatory (*oficio*), and be rendered in the same way. If the witness does not reside at the place of suit, he will be examined by the judge of the place where he is found, upon *exhorto* accompanied by a sealed copy of the interrogatories presented.

The parties may be present at the examination of witnesses, but cannot interrupt them or ask any questions not stated in the interrogatories; only where a witness fails to answer on any point, or has contradicted himself or answered ambiguously, may the parties call the attention of the judge, who if he sees fit, may require the witness to make the proper explanations. Witnesses will testify under protest to speak the truth, in the form and under the penalties provided by law; they will be examined separately and successively, no one being allowed to hear what the others testify; the judge may put such questions as he may deem proper, provided they relate to the facts contained in the interrogatories; no subsequent interrogatory may be made at any time upon matters not contained in the first.

If the witness does not know the language, he will testify through an interpreter appointed by the judge; besides his testimony in Spanish, the witness or his interpreter may write it in his own language. The answers of witnesses will be written down in their presence, literally and without abbreviation; they may themselves write or dictate them, and may rubricate each page, and may read them over; the witness must then sign his testimony and ratify it, or if he cannot read or write, the secretary will read it to him and sign it together with the judge, making note of the fact; once signed, it cannot be altered in form or substance. Witnesses must state their reason for what they testify, and the judge

will require it although not called for in the interrogatories, also upon the following points:⁴ Their name, age, status, occupation and domicile; whether related to either party, and in what degree; whether they have direct or indirect interest in the lawsuit or any other like it; whether they are intimate friends or enemies of either party. Each party may call as many as twenty witnesses. (Civ. Proc., Arts. 505-531; Cod. Com., Arts. 1263-1273.)

Art. 788. Public Fame — When Admissible.— For “public fame,” or “general reputation,” to be admissible as proof, it must have the following conditions: 1, That it relates to a time prior to the beginning of the suit; 2, that it originated with determined persons, who are or were known, honorable, trustworthy, and having no interest in the matter in controversy; 3, that it is uniform, constant and accepted by the generality of the population where the event in dispute is supposed to have occurred; 4, that it is not founded on religious or popular prejudices or on the exaggerations of political parties, but upon a rational tradition or some facts which, although indirectly, tend to prove it. Public fame must be proven not only by three or more unexceptionable witnesses, but they must be such as by reason of their age, intelligence and the independence of their social position, are truly worthy of the name of trustworthy. The witnesses must not only name the persons whom they heard relate the event, but must also state the probable causes on which the popular belief is founded. (Civ. Proc., Arts. 533-535; Cod. Com., Arts. 1274-1276.)

Art. 789. Presumptions — Kinds and Effect.— A presumption is the consequence which the law or the judge deduces from a known fact in order to ascertain the truth of another

⁴ The personal data indicated is called the “*generales*” of the witness or other person. The usual form is “*Diga sus generales.*” as we use to say: “State your name, age, residence, and occupation.” The advantage in this instance is with the Spanish.

which is unknown; the first is called legal and the second human. A legal presumption arises: 1, Where the law expressly creates it; 2, where the consequence flows immediately and directly from the law. Human presumptions arise when from one fact duly proven another is deduced which is its ordinary consequence. No proof is admissible against a legal presumption: 1, When the law expressly forbids it; 2, when the effect of the presumption is to annul an act or deny an action, except where the law expressly reserves the right to make proof; against other legal presumptions, and against human presumptions, proof is admissible. Human presumptions do not serve to prove those acts which, according to law, must be made to appear in a special form. The presumption must be grave, that is, worthy of being accepted by persons of good judgment (*buen criterio*); it must also be precise, that it, that the proven fact on which it is based, is a part, or antecedent or consequence of that which is sought to be proven.

Where there are several presumptions by which a fact is sought to be proven, they must be concordant, that is, one must not be modified or destroyed by another, and they must have such a relation (*enlace*) among themselves and with the proven fact, that they can but be considered as antecedents or consequences thereof. If there are several facts on which a presumption is founded, besides the qualities of grave and precise, they must be so interrelated (*enlazados*), that although they produce different *indicia*, all tend to prove the fact in question, which therefore must needs be the cause or the effect of the same. (Civ. Proc., Arts. 536-545; Cod. Com., Arts. 1277-1286.)

Art. 790. The Value of Proofs — Probative Force.— Judicial confession is plenary proof where made in accordance with Art. 777, by a person capable of binding himself, in regard to a personal matter (*hecho propio*) and concerning the affair, and made with full knowledge and without coercion

or duress, except as otherwise expressly provided by law. Where such confession goes to the whole demand, the ordinary suit may cease, at the plaintiff's instance, and be proceeded with as an executive action (*en la vía ejecutiva*). The foregoing requisites apply to facts testified to by a party required to *absolver posiciones*, affirmatively in answer to interrogatories propounded by the opposite party. A party declared *pro confesso* may render proofs to the contrary. Extra-judicial confessions are plenary proof, if the incompetent judge before whom made was supposed by both parties to be competent at the time of the confession, and where made in a lawful will, except as otherwise provided by law; outside the foregoing cases, extra-judicial confessions are not proof. (Civ. Proc., Arts. 546-550; Cod. Com., Arts. 1287-1291.)

Art. 791. Same — Public and Private Instruments and Records.— Public instruments are plenary proof, although presented without citation of the opposite party, saving his right to impeach their genuineness and to require their comparison with the protocols and archives, and if found to disagree with these records, such instruments are not proof on the point of disagreement; but their validity is not affected by the defenses urged against the action founded on them. Entries in parochial registers before the establishment of the Civil Register are not plenary proof of the civil status of persons, unless compared (*cotejadas*) by a Notary Public. Judicial proceedings (*actuaciones judiciales*) are plenary proof.

Private documents are only plenary proof, and against their author, when they are legally acknowledged in accordance with Art. 782, except as to the signature of the acceptor of a bill of exchange. Simple documents proven by witnesses have only the value to which their testimony is entitled. A document presented by a litigant is plenary proof against him in all its parts, although not acknowledged by the oppo-

site party. An acknowledgment made by a general executor (*albacea*), and by an heir so far as concerns his interest, is plenary proof. Judicial examination or inspection in matters not requiring special or scientific knowledge, is plenary proof. Appraisements are plenary proof. The weight (*fé*) of other expert evidence will be determined by the judge according to circumstances. (Civ. Proc., Arts. 551-561; Cod. Com., Arts. 1292-1294, 1296-1301.)

Art. 792. Testimonial Proofs — Weight of Evidence.— The weight (*valor*) of testimonial evidence, or the testimony of witnesses, depends upon the discretion (*arbitrio*) of the judge, who can never take any facts so testified to as proven, unless there are at least two witnesses in whom the following qualifications concur: 1, That they are free from all exceptions; 2, that they are uniform, that is, that they agree not only in the substance, but in the accidents of the fact which they relate, or if not agreeing, that they do not modify the essence of the fact; 3, that they testify of certain knowledge (*ciencia cierta*), that is, that they have heard pronounced the words, witnessed the act, or seen the material fact, about which they testify; 4, that they give a sound reason (*fundada razón*) for their statement.

In order to weigh (*valorar*) the testimony of witnesses, the judge will take into consideration the following circumstances: 1, That the witness is not incompetent (*inhábil*) for any of the grounds stated in Art. 786; 2, that by reason of his age, capacity and intelligence he has sufficient judgment to judge of the act; 3, that because of his probity, the independence of his position and his personal antecedents, he has complete impartiality; 4, that the fact testified about is susceptible of being known by the senses, and that the witness knows it of his own knowledge, and not by inference or statements of other persons; 5, that the testimony be clear and precise, without doubts or reticence either in regard to the substance or the essential circumstances of the fact; 6,

that the witness was not actuated by force, fear, deception, error or subornation, but judicial compulsion (*apremio*) is not considered as force or intimidation; 7, that the general questions prescribed in Art. 787 be scrupulously required to be answered.

A single witness affords plenary proof where both parties, being of lawful age, personally agree to accept his statement (*pasar por su dicho*). Legal presumptions, as specified in Art. 789, are plenary proof; other legal presumptions are plenary proof until the contrary is proven. The weight to be accorded to human presumptions will be estimated by the judges, according to the nature of the facts, the proof of them, the more or less natural relation existing between the known truth and that which is sought, and the more or less exact application which can be made of the principles laid down in Art. 789 in regard thereto. Proofs given in contravention of the provisions of this Chapter shall have no legal value. (Civ. Proc., Arts. 562-568; Cod. Com., Arts. 1302-1306.)

Art. 793. Same — Merchants' Account Books.— The following rules will govern the probative force of merchants' account books: 1, The books of merchants are proof against them, and no evidence to the contrary is admissible; but the adverse party cannot accept entries favorable to him and reject others which are unfavorable, but having accepted this form of proof, he is bound by the whole result, giving equal consideration to all entries relative to the question in dispute; 2, if the entries in the books kept by two merchants disagree, and one set has been kept in conformity with the requirements of this Code and the other in disregard thereof, the entries in the regular books will prevail against the irregular, unless the contrary is proven by other admissible proofs; 3, if one of the merchants does not present his books, or shows that he does not keep any, those of his adversary, if kept with the legal formalities, will be proof against him, unless the fail-

ure to have such books is shown to be due to "*fuerza mayor*," and excepting always proof to the contrary of the entries in evidence, by other admissible means of proof; 4, if the books of both merchants have all legal requisites, and are contradictory, the judge or tribunal will decide according to the other legal proofs weighed in accord with the general rules of law (*derecho*); 5, such entries are sufficient evidence that a partner has paid in his contribution, but the managing partners must prove their contributions by other sufficient proofs. (Cod. Com., Art. 1295.)

CHAPTER 8.

JUDGMENTS. (SENTENCIAS.)

Art. 794. Kinds — General Rules.

795. Final Judgments — What Are.

Art. 794. Kinds — General Rules.— Judgments are definitive or interlocutory; the former is that which decides the principal matter in suit, the latter decides an incident, dilatory defenses or jurisdiction. Every judgment must be founded on law, and if a controversy can be decided neither by the natural sense nor by the spirit of the law (*ley*), the general principles of law (*derecho*) will be followed, taking into consideration all the circumstances of the case. The judgment must be clear, and in declaring the law it must absolve or condemn; it must be confined to the issues made by the demand and answer. When the plaintiff cannot prove his action the defendant must be absolved. Under no pretext can judges or courts defer, delay, fail or refuse to decide the questions discussed in the lawsuit, making a separate decision on each point. Where judgment is for the proceeds, interest, damages or losses, their amount will be liquidated and fixed, or bases established for determining the same when they are not the main object of the suit. (Civ. Proc., Arts. 599–608; Cod. Com., Arts. 1321–1330.)

Art. 795. Final Judgments — What Are.—A final judgment (*la cosa juzgada; res adjudicata*) imports absolute verity (*verdad legal*), and no recourse or proof is admissible against it except as expressly provided by law; a judgment is final when it becomes executionary (*causa ejecutoria*), by force of law or by judicial declaration. Judgments become executionary (*causan ejecutoria*) by force of law: 1, Where rendered in verbal suits involving not over five hundred pesos; 2, where rendered in second instance in any civil case, except as otherwise provided herein; 3, where rendered by arbiters or arbitrators, according to law; 4, judgments of cassation; 5, judgments rendered on “denied” appeal or cassation; 6, those which determine jurisdiction; 7, all judgments declared irrevocable by the Code of Civil Procedure or Civil Code, and those declared by law subject to no other recourse than the responsibility of the judge. Judgments become final by judicial declaration: 1, Where expressly consented to by the parties, by their lawful representatives or by their attorneys with special power; 2, judgments against which, after due notification, no recourse is interposed within the time prescribed by law; 3, those against which recourse has been interposed, but not prosecuted in due time. The declaration of final judgment will be made, by the judge who rendered the judgment, after notification to or appearance of both parties, three days being allowed for opposition and three days for rendering the decree. The *auto* by which a judgment is declared final or not final admits no other recourse than responsibility; final judgments must be registered as required by the Civil Code. (Civ. Proc., Arts. 621–628.)

CHAPTER 9.

APPEALS AND OTHER “RECURSOS.”

Art. 796. Appeals — Kinds and Effect.

797. Same — Cassation.

Art. 796. Appeals — Kinds and Effect.— Upon definitive or interlocutory judgment rendered, there are several “*recursos*” allowable, according to the circumstances of the case; these are: 1, Accleration of judgment; 2, revocation; 3, appeal; 4, denied appeal; 5, cassation. The first lies before the judge who rendered a definitive judgment, within the fixed term of three days, to secure the explanation of any contradiction, ambiguity or obscurity in the judgment; the judge may remedy any such defects, but cannot in any way change the substance of the judgment. Revocation does not lie against a judgment, but only as to unappealable “*autos*” and “*decretos*,” and must be interposed within twenty-four hours after notification.

An appeal (*apelación*) lies to the Superior Tribunal to confirm, reform or revoke the judgment, definitive or interlocutory, of the inferior court; appeal may be taken: 1, By the party against whom judgment was rendered when he considers himself aggrieved; 2, by the successful party, who although winning the suit, has not secured the restitution of “fruits,” or the payment of damages and costs; the appeal may be taken and prosecuted by the attorney although he has no special power for the purpose. Appeals are “devolutive” or “suspensive” (*en el efecto devolutivo y en el efecto suspensivo*), and may be taken in both effects (*en ambos efectos*), unless otherwise provided, or in the first only. Appeal taken in both effects suspends the execution of the judgment until final decision of the appeal; the appeal in the “*efecto devolutivo*” does not suspend execution; in the latter event the judgment will not be executed unless the appellant executes a sufficient bond to be approved by the court after hearing the opposite party; the bond given by the plaintiff must be conditioned for the return of whatever he receives, with its products, interest and damages if the judgment is revoked; that given by the defendant must be conditioned to pay or perform the judgment against him if affirmed. In mercantile suits, both ordinary and executive, appeal lies in both effects,

from definitive judgments, and from interlocutory judgments which decide questions of personality, jurisdiction, rejection of evidence, or challenge; in all other cases it only lies in the "*efecto devolutivo*"; but no mercantile appeal can be taken unless the amount involved exceeds one thousand pesos. If the judgment decides several propositions, the appeal may be taken in respect to some of them and may be consented to in respect to the others.

The appeal must be taken before the judge who rendered the judgment, verbally upon notification, or in writing within the unextendable term of five days, if from a definitive judgment, and within three days if from an *auto*. Where the appeal is in both effects the judge must remit the record to the Superior Tribunal within forty-eight hours, previously citing the parties. (Details of the practice in regard to notifications and hearings are omitted.) Within thirty days after the several steps which may be taken over proofs or incidents, the case will be called for hearing, after notice to the parties, and will proceed whether they or their lawyers are present or not; the secretary will read the record, when he has concluded the president of the tribunal will declare the record "*visto*," the decision must be rendered within twenty-four hours, and the decision published within three days afterwards. Every judgment in second instance is final.

Where an appeal is denied, the recourse of "denied appeal" (*apelación denegada*) lies within three days; the judge will suspend the proceedings and remit a certificate setting out the matters briefly and clearly, to the Superior Tribunal within five days, which will admit or deny the right of appeal. (Civ. Proc., Arts. 629-697; Cod. Com., Arts. 1331-1343.)

Art. 797. Same — Cassation.— The recourse of cassation only lies against definitive judgments rendered in the last instance of any suit, and which have not yet become final; it can be interposed in respect to the merits or substance of the case or because of violation of the rules of procedure; in

either event the local laws must be strictly observed, and like appeals will be summarily decided, in the First Division (*Sala*) of the Superior Tribunal. Cassation can only be interposed by the party prejudiced by the violation of the law; it must if possible be interposed before the judgment is rendered, or where the violation of law occurs in the judgment itself or afterwards, in the application for the recourse. Only parties to the recourse are affected by the cassation, which can only extend to the points directly embraced, the balance of the judgment being final. A bond to cover judgment and damages must be furnished within three days, and where the recourse is against concurring judgments in two instances, the applicant must within five days make a deposit of an amount to be fixed by the court not to exceed one thousand pesos.

Cassation lies in respect to the merits: 1, Where the decision is contrary to the letter of the law applicable to the case or to its juridical interpretation; 2, where the judgment embraces persons, things, actions or defenses not involved in the suit or does not embrace all that have been; in such cases the tribunal will only pass upon the legal questions involved and the principles upon which it should be decided, and will affirm or revoke the judgment, returning the record to the court from which it came for the execution of the judgment. In respect of violation of procedure, cassation lies: 1, For want of summons in due time and form and for failure to hear those who should be cited, including the *Ministerio Público*; 2, for want of personality or sufficient power-of-attorney in those who have appeared in the suit, the party not properly represented being entitled to the recourse; 3, for failure to order taking of proofs when it should have been done, or for failure to permit the parties to offer lawful proof in the proper time; 4, for failure to grant extensions and new terms where the party was entitled to them; 5, for failure to cite the parties for taking proofs or any other matter in regard to evidence; 6, for failure to show any documents or parts of

the record to the parties, so that they could not plead in regard to them; 7, for failure to give proper notice of the *auto* of proof or to give citation for definitive judgment; 8, for want of competency or jurisdiction, where the judge improperly continues to act when prohibited or disqualified; 9, for failure to frame a judgment according to the terms of an award, or denied the parties a hearing, proof or defenses they wish to make as provided in the award or by law; 10, for having ordered payment made to a creditor in any suit without requiring bond where necessary by law. The recourse of cassation must be interposed in the fixed term of eight days. (Civ. Proc., Arts. 698-719; Cod. Com., Arts. 1344-1345.)

CHAPTER 10.

EXECUTION OF JUDGMENTS.

Art. 798. Executions — Incidents.

799. Same — Judgments of Other States.

800. Same — Foreign Judgments.

Art. 798. Executions — Incidents.— A judgment must be executed by the judge who rendered it in first instance, to whom the superior court rendering final judgment will return the records within three days after notification, together with a certified copy of the judgment, which is called the "*ejecutoria*," and will be noted on the record. If no property is already embargoed, it will be done as provided by law, the judge will fix an inalterable term of three days within which the debtor must perform the judgment. If a price is fixed in a mortgage at which the property may be adjudicated to the creditor, and auction sale is waived, the property may be so adjudicated after the three days; otherwise, at the end of that time, the judge will order published in the *Boletín Judicial*, and one other paper of largest circulation, a final announcement of sale, stating the day and hour when it will be

held, which must be within thirty days after the three days allowed for payment; if the property seized is money or convertible securities, it will be paid over at the end of the three days without sale.

If the property has not been previously appraised or its value does not appear by public instrument or by consent of the parties, it will be appraised by experts appointed as provided by law. When the property, if real estate, is appraised, its sale will be advertised for three times, seven days apart, by edicts published in the *Boletín Judicial* and other papers of largest circulation in the opinion of the judge, and the property will be sold at the time and place announced as hereinafter provided.

Where the judgment requires the performance of some act, the judge will fix a reasonable time for its performance according to circumstances, after which time, if the act is not performed, the following rules will be observed: 1, If the act is personal and cannot be performed by another, the party may be compelled to perform by force, or fined and imprisoned, besides liability for damages; 2, if the act can be performed by another, the judge will appoint some one to perform it at the cost of the party who should perform it; 3, if the act consists in executing some public instrument, the judge will execute it, reciting therein the circumstance. If the judgment prohibits the doing of something, its violation is subject to the payment of damages. (Civ. Proc., Arts. 736-763; Cod. Com., Arts. 1346-1348.)

Art. 799. Same — Judgments of Other States.— Judgments and other judicial resolutions rendered by one judge may be executed by another in a different place, upon *exhorto* from the former setting out the record. If a third person in possession of the property to be executed should claim it, the judge will summarily pass upon the defenses, and the decision is appealable only in the devolutive effect. (Civ. Proc., Arts. 769-799.)

Art. 800. Same — Foreign Judgments.— Judgments and other judicial resolutions rendered in foreign countries shall have in Mexico the force provided by treaties on the subject; if no special treaty with the nation where rendered, they shall have the same force in Mexico as is conceded by the laws of such country to like judgements rendered in Mexico, and if rendered in a country whose jurisprudence allows no enforcement of Mexican judgments, they shall have no effect in Mexico.

Foreign judgments and resolutions must be legalized as provided in Arts. 780 and 781, except as may be provided by treaty or international law. In the absence of treaty and where there is reciprocity of treatment, as above provided, a foreign judgment will only have force in Mexico when it reunites the following requisites: 1, That it was rendered in a personal action; 2, that it was not rendered upon default; 3, that the obligation upon which it was rendered is lawful in Mexico; 4, that it is final and executionable according to the law of the country where rendered; 5, that it has the requisites necessary under the Code of Civil Procedure as to its authenticity. The judge who would have jurisdiction of the original suit is competent to execute a foreign judgment.

Upon presentation of the record, properly translated, in the competent court, with request for its execution, notice for nine days will be given to the judgment debtor, or if he is not present, by publication as provided by law, after which it will be referred for like time to the Ministerio Público, according to whose opinion the judge will decide by *auto* whether or not the judgment is to be executed, such decision being appealable in both effects. Neither the inferior judge nor the Superior Tribunal can examine or decide upon the merits of the judgment, but are limited to determine upon its authenticity and whether according to Mexican law it should be executed. If execution is denied, the record will be returned to the party presenting it; if execution is awarded, it will be enforced as above provided in respect to local executions. (Civ. Proc., Arts. 780-794.)

CHAPTER 11.

SEQUESTRATION AND SALE.

Art. 801. Judicial *Sequestro* — Incidents.

802. Judicial Sales — Incidents.

803. Proceeds of Sale — Resale.

804. Sales of Personal Property.

Art. 801. Judicial Sequestro — Incidents.— Judicial *sequestro* only lies when expressly ordered in writing for the purpose of securing property by putting it in custody or administration, according to its nature, to secure rights involved in suits pending or to be brought, either provisionally, as a percautionary measure, or as a formal embargo in mortgage and executive proceedings, and in the execution of judgments. The object of *sequestro* may be money, jewels, credits, other personal property, real estate, and mercantile or industrial establishments; money and jewels levied on will be deposited in bank or elsewhere, other personal property will be deposited with some person appointed as custodian; in case of credits, the *sequestro* is made by notice to the debtor not to pay them, but to retain them subject to the order of the court, under penalty of double payment, and by notice to the creditor not to dispose of the same, under the penalties of the Penal Code; if the credit itself is secured, it will be deposited. If the property attached is urban real estate or its rents, the receiver will act as administrator; if rustic real estate or a business establishment, the receiver will act as a mere interventor, taking charge of the cash and overseeing the accounts, inspecting the management, etc., according to circumstances. The details of the receiver's duties are omitted. (Civ. Proc., Arts. 795–815.)

Art. 802. Judicial Sales — Incidents.— All judicial sales (*remate*) must be public and held in the court which has jurisdiction of the execution. Real estate cannot be sold

without first securing a certificate of encumbrances for the past twenty years from the Public Register, and citing all creditors who appear therefrom; such creditors have the right to intervene in the sale and make suggestions to the judge in regard to the protection of their rights, and to appeal from the *auto* approving the sale. During the sale the plans, if any, and the appraisements must be on view, and the bidders must be furnished with all information found in the record which they may request, and will have the greatest freedom in making their bids.

At the time of sale the judge will personally pass a list of the bids presented, and will grant a half hour to permit of any new ones; at the end of that time he will announce that the sale will proceed and no new bidders will be allowed; he will at once revise the bids presented, rejecting all which do not contain a legal bid or which are not guaranteed; a bid to be legal must be for at least two-thirds of the appraised or agreed value of the property, provided the cash payment bid is sufficient to pay the execution debt and costs, or that the two-thirds be bid in cash where according to the appraisal it is not sufficient to satisfy the debt and costs. The bids must be in writing and made by the bidder himself or by his representative with lawful power, and must state: The name, age, legal capacity, status, occupation and domicile of the bidder (*postor*), and of his surety (*abonador*); the amount which he bids for the property, stating the amount of cash and the terms for payment of the balance and rate of interest he will pay; an express submission to the judge having jurisdiction of the execution to compel performance of the contract.

All bids must be guaranteed by a surety or by the deposit of the amount in cash during the sale; the guaranty must contain an express waiver of the benefits of "*orden, excusión and división*," as the case may be, and must be signed before a commissioned broker, who must certify that he knows the surety to be responsible for the amount for which the prop-

erty may sell in view of its appraisalment; the guaranty covers the bid and all raises which the bidder may make; if the execution creditor (*ejecutante*) wishes to bid, the guaranty or cash deposit will only cover the excess of the bid over the debt on the date of sale. When the bids have been found in proper form, they will be read aloud by the secretary so that they may be increased by any bidder, and if anyone offers a raise over the highest bid, the judge will allow fifteen minutes for raises; at the expiration of which time he will declare the property sold to the highest bidder within that time, and within three days the judge will render an *auto* approving or disapproving the sale, from which an appeal lies in both effects if the bid exceeds five hundred pesos, and the tribunal will summarily decide the appeal within five days.

Before the sale begins the debtor may release his property upon payment of the debt and costs. Within three days after approval of the sale, the property will be delivered to the purchaser and a conveyance executed to him in accordance with the terms of his bid; if the debtor refuses to execute the conveyance the judge will sign it *ex officio*, and upon payment of the price will put the purchaser in possession, if necessary. (Civ. Proc., Arts. 816-839.)

Art. 803. Proceeds of Sale — Resale.— From the proceeds of the sale the debt and costs will be first paid so far as possible; if the proceeds are notoriously less than the costs, the amount will be paid over to the creditor as soon as received; if in excess of the debt and costs the balance will be paid to the debtor, unless held up at the suit of another creditor or in case of pending insolvency proceedings as provided by law. The net balance after payment of the debt and all costs is subject to embargo by another creditor unless there are prior liens on it; a second attaching creditor may require the first to prosecute his action to a sale if he has not already done so. If at the first auction there is no legal bidder, a second auction must be held within seven days, and

so on until the property is sold, the price fixed as basis of sale being reduced ten per cent. each time; at any auction where there is no bidder, the creditor may have the property adjudicated to him for two-thirds of the price which is the basis of sale for such auction. If there are several legal bids, the highest will be preferred, and the preference must be declared within three days after the auction, after which time the bidders are not required to make good their bids.

The creditor to whom property is adjudicated must assume any mortgage debts on the property and pay them at maturity, delivering any free balance to the debtor. If a price is fixed in a mortgage at which the property may be adjudicated to the creditor, but auction is not waived, the basis of a legal bid will be that in excess of the price fixed which will cover the debt with the cash payment; if there is no legal bid the property will be adjudicated to the creditor at the agreed price; if the price is fixed in the contract, but it is silent as to adjudication, there will be no new appraisement, but the price fixed will serve as the basis of the sale. (Civ. Proc., Arts. 840-855.)

Art. 804. Sales of Personal Property.—The foregoing rules apply only to the sale of real estate; where personal property is to be sold under execution, it will be sent to the *Monte de Piedad* for sale, where it will be appraised and sold according to the by-laws and regulations of said establishment, and the proceeds, less fees and charges, held at the disposal of the court. At any time before the sale the execution plaintiff may request the application of the attached property at its appraised value at the time, and paying the *Monte de Piedad* in cash the amount for the appraisement and deposit and the excess of price, if any, over the debt and costs. If by reason of the rebates (*retasas*) of 10% in the appraised value of the property, its value does not cover the debt, or if a year passes without sale, the creditor may have other property levied on under the execution. If the property attached

is livestock or credits which are not according to law to be considered as real property, it will nevertheless be sold in the same manner as real estate; in Lower California personal property will in all cases be sold in the same manner as real estate. (Civ. Proc., Arts. 856-860.)

CHAPTER 12.

INTERVENING SUITS. (TERCERÍAS.)

Art. 805. Definitions — Incidents.

Art. 805. Definitions — Incidents.— In any suit between two or more parties, a third party may intervene with another suit different from the former; such intervening litigant is called *tercer opositor*, and his action *tercería*, which may be either *coadyuvante* or in aid of either party to the principal suit, or *excluyente* or opposed to both. The former may be interposed in any suit at any stage before final judgment, and has no other effect than to associate the intervening party with the one to whose assistance he comes, in the prosecution or defense of the case, only one judgment being rendered binding on all the parties.

The *excluyente* or opposing interventions are founded on either the right of ownership of, or of preference or lien upon, the property or fund in suit, and may be interposed in any case at any time before the sale or adjudication of the property or payment to the plaintiff, as the case may be. Details of the proceedings are omitted. (Civ. Proc., Arts. 902-921; Cod. Com., Arts. 1362-1376.)

CHAPTER 13.

ORDINARY SUITS.

Art. 806. Demand and Summons.

807. Summons — Manner and Time.

808. Appearance — Default.

809. Exceptions — When Pleaded.

810. Foreign Plaintiffs — Transients.

811. Answer — Counterclaims and Set-offs.

812. Proceedings after Answer.

Art. 806. Demand and Summons.— All suits between parties, not requiring special procedure under the Codes, will be conducted as ordinary suits. Such action is begun by the demand (*demanda*), in which the relief sought and the person against whom it is asked, will be clearly and succinctly stated, the statements of fact and of the law on which the right is founded being orderly numbered; the demand must be accompanied by the documents on which the action is founded; in mercantile actions simple copy for the defendant will be delivered, and he must make answer within five days; if the plaintiff has not the documents at his disposition, by which is meant where he can legally ask for a certified copy, he must indicate in his demand where the archives containing the originals are kept, so that copies may be ordered by the judge at his cost as provided by law; after suit brought no documents of later date can be filed, unless upon proof that plaintiff had no knowledge of them. The judge will *ex officio* reject all demands not in proper form, his decision on the matter being appealable in both effects. (Civ. Proc., Arts. 922–927; Cod. Com., 1377–1378.)

Art. 807. Summons — Manner and Time.— Upon demand filed and admitted by the judge, notice will be ordered given to the defendant and he will be summoned to answer within nine days, which term cannot be extended; but where the

defendant does not reside in the place of suit, the judge may increase the time of summons (*emplazamiento*) by one day for every twenty kilometers or fraction over ten, of distance, or for such time as may be necessary if the defendant resides in a foreign country. The writ or order will be delivered to the plaintiff, who must return it duly executed; the judge to whom the writ is directed will order the summons made as above provided and will return the writ executed to the bearer of it.

The effects of the summons are: 1, To prefer for hearing the suit the judge who issues it; 2, to require the defendant to contest the suit before such judge if he was competent when it was begun; 3, to require the defendant to make answer before the same judge, saving his right to object to his competency. (Civ. Proc., Arts. 928-932.)

Art. 808. Appearance — Default.— If the interests of several defendants are allied, they will all answer within the same term, but if they are opposed, each of them will be granted, successively, the above terms to answer. If the defendant does not appear within the time required in the summons, after being cited as above provided, upon default being rendered (*acusada una rebeldía*), the demand will be taken as answered, and after notification of the default in the same form as required for the summons, the suit will proceed as in other cases. (Civ. Proc., Arts. 933-934.)

Art. 809. Exceptions — When Pled.— Dilatory exceptions must be pleaded all together within the precise term of three days, except those of incompetency and challenge, and no answer need be filed until the exceptions are decided; in civil actions dilatory exceptions can only be pleaded up to three days before the time for answering, if pleaded later they must be incorporated in the answer and do not suspend the proceedings in the case; in mercantile suits they must be pleaded within the fixed term of three days. Peremptory ex-

ceptions must be presented, proven and decided together with the principal suit. (Civ. Proc., Arts. 935-940; Cod. Com., Arts. 1379-1381.)

Art. 810. Foreign Plaintiffs — Transients.— Where the plaintiff is a foreigner or transient, it is a ground of “dilatatory exception,” under which his personal detention in the place (*arraigo*) or the giving of a bond to abide the results of the suit (*estar á derecho*), may be required, in the cases and form in which the State or country to which he belongs imposes such conditions on citizens of Mexico. (Civ. Proc., Art. 938.)

Art. 811. Answer — Counterclaims and Set-offs.— The demand must be answered within the time fixed in the summons (*emplazamiento*), if no dilatory exceptions have been filed as above provided, and where they are filed, then within nine days from the day after notification of the final judgment overruling them; if not filed within such time, a judgment by default may be rendered, the demand being taken as denied at the instance of the plaintiff, and the judge will receive the case to proof and proceed as in ordinary cases. The answer shall be drawn in the form required for the demand, and shall also set out all peremptory exceptions the defendant may have. If any counterclaim or set-off is set up in the answer, notice will be given the plaintiff for six days, after which the cause will proceed; such counterclaim or set-off will be heard, like other peremptory exceptions, at the same time as the principal suit and be decided in the same judgment. After the answer is filed the defendant cannot set up any exceptions or counterclaims, but may bring a separate suit in regard to them. (Civ. Proc., Arts. 941-946.)

Art. 812. Proceedings After Answer.— Upon answer filed, the taking of proofs, if any are necessary, will be ordered, for which purpose the judge will fix such term, not exceeding

forty days in commercial cases, as the nature of the case may require, during which term it may be extended by the judge or for such time as the parties may agree in writing; at the expiration of the time for taking proof, order will at once be made for the publication of proofs. Documentary proofs may be admitted at any time before judgment, upon protest by the party that he did not know of them or could not get them sooner, and giving notice to the opposite party so that he may be heard. Upon the publication of proofs, the original record will be delivered, first to the plaintiff and then to the defendant, for ten days to each party, in order that they may make up their briefs (*para que aleguen*), or arguments. At the expiration of such time, the parties will be cited for judgment, which will be pronounced within fifteen days. (Civ. Proc., Arts. 947-948; Cod. Com., Arts., 1382-1390.)

CHAPTER 14.

EXECUTIVE SUITS.

Art. 813. When Available — Executive Instruments.

814. Executive Procedure — Embargo.

815. Exemptions — Designating Property.

816. Proceedings after Embargo — Execution and Sale.

Art. 813. When Available — Executive Instruments.— The executive suit may be brought, in civil or mercantile cases, when the demand is founded on an “executive instrument,” or one which “carries ready execution” (*trae aparejada ejecución*). These being somewhat different in civil and mercantile cases, they are separately stated. Under the Code of Commerce, documents which “carry ready execution” are: 1, Final judgments and unappealable awards for amounts certain; 2, public instruments; 3, judicial confession of the debtor; 4, bills of exchange, drafts, due-bills, promissory notes, and other commercial documents, as provided in the Code, and after the acknowledgment of signa-

ture, except that of the acceptor of a bill of exchange, which is not required; 5, insurance policies; 6, the decision of insurance experts appointed to fix the amount of loss; 7, invoices, current accounts and all other commercial contracts signed and judicially acknowledged by the debtor. According to the Code of Civil Procedure, executive documents are: 1, The first copy of an *escritura pública* issued by the notary or judge before whom it was executed; 2, subsequent copies issued by judicial order after citation of parties; 3, other public instruments which are full proof at law; ⁵ any private document acknowledged under protest before competent judicial authority or taken as acknowledged as provided by law; 5, judicial confession; 6, agreements made in the course of a lawsuit before the judge; 7, the report of auditors, judicially ratified or approved by the parties: final judgments and the documents mentioned in clauses 6 and 7 above will be executed if the interested party has not adopted the punitive methods provided for failure to perform the judgment; ⁶ the amount of the execution must be certain or capable of being ascertained as provided by law.

Obligations on condition or on time are not executive until the condition is performed or the time expired, except as provided in Arts. 321, 326 and 462. If the executive document contains an obligation which is only certain and determined in part, the execution of such part may be decreed, the balance being reserved for ordinary suit. If the obligation is to do a certain thing, the following rules will be observed: 1, If the plaintiff requires the performance of the act by the party obliged or by a third person, as provided in Art. 338, the judge will fix a reasonable time for its performance; 2, if the contract provides for a penalty, execution will be decreed for the amount of it; 3, the amount of damages will be fixed by the plaintiff, according to Art. 339; 4, the defendant may

⁵ See Art. 791.

⁶ See Art. 798, last paragraph.

oppose the performance of the act or the payment of the penalty and damages, in the same manner as in other executions. (Civ. Proc., Arts. 1015-1022; Cod. Com., Art. 1391.)

Art. 814. Executive Procedure — Embargo.— Upon presentation of the demand accompanied by the executive document on which it is founded, the judge will issue a mandatory *auto* requiring the debtor to make payment or to embargo sufficient of his property to satisfy the debt and costs; if he is not found on first search, a *citatorio* will be left for him fixing an hour within the next twenty-four for him to wait; if he does not do so, the embargo will proceed with any person in the house or with the nearest neighbor. In civil cases the order of levy on property will be: 1, Money; 2, jewels; 3, produce and income (*frutos y rentas*) of all kind; 4, other kinds of personal property; 5, real estate; 6, salary or pay; 7, credits. In mercantile suits the order of embargo shall be levied upon: 1, Merchandise; 2, credits of easy and prompt collection, to the satisfaction of the creditor; 3, other personal property of the debtor; 4, real estate; 5, other actions and rights which the debtor may have. The property levied on will be deposited on the plaintiff's responsibility with some person to be named by him for the purpose. Particular rules for the several kinds of levy are stated in the chapter, the details of which are omitted.

If the credit sought to be enforced is secured by mortgage, the creditor may proceed either by foreclosure, executive or ordinary suit; if it is secured by pledge, the property pledged will be first levied on, and if not sufficient to cover the debt, other property will be levied on in the order above indicated; in cases where it is so agreed in the contract, the property pledged or mortgaged may be sold or adjudicated to the creditor without the necessity of judicial sale, as in other such cases. (Civ. Proc., Arts. 1023-1025, 1041, 1045; Cod. Com., Arts. 1392-1395.)

Art. 815. Exemptions — Designating Property.— The following property only is exempt from embargo: 1, The clothing, bed, and common and indispensable furniture of the debtor, his wife and children, if not luxurious in the opinion of the judge; 2, the necessary tools and instruments of the debtor's trade or occupation; 3, the oxen and other animals necessary for the working of the farm; 4, the books of persons in the literary professions so far as necessary to their exercise in the opinion of the judge, who will appoint an expert to report about it; 5, the instruments of physicians, surgeons and engineers, under the conditions in clause 4; the arms and horses of soldiers in actual service and necessary under the respective laws; 7, the effects required for the carrying on of industrial establishments, so far as necessary for their service and operation, in the opinion of the judge upon report of expert appointed by him; 8, crops until harvest time; 9, the right of usufruct, but not the produce of the same; 10, the rights of use and habitation; 11, the pensions of aliments, as below provided; 12, easements, unless the estate in favor of which they are created is embargoed, but waters may be embargoed when upon the dominant estate; 13, life annuities as provided in Art. 460; the salaries and emoluments of public officials, civil or military, and pensions paid out of the Treasury. The benefits of these exemptions cannot be renounced. A debtor subject to *patria potestad* or guardianship, or physically disabled to work, or who without his own fault is without means or occupation, will be allowed aliments to be fixed by the judge in view of all the circumstances, except where the plaintiff himself has no property besides his judgment. Where the levy is on the wages or salary of private employés and servants, only one-fifth of the total is subject to embargo where it is less than eight hundred pesos a year, one-fourth if from eight hundred to two thousand, and one-third if over two thousand; this provision can not be waived.

The debtor has the right to designate the property to be levied on, and only in case he refuses to do so or is absent,

can the plaintiff or his representative do so, and only in the order prescribed in the foregoing Article; he may do so however and without observing such order, where: 1, He is authorized to do so by the terms of the contract; 2, if the defendant does not present any property; 3, if the property is in different places, in which event he may select those which are in the place of suit; the property will be deposited with a person named by the creditor until inventory is made. (Civ. Proc., Arts. 1026-1033, 1048-1050.)

Art. 816. Proceedings After Embargo — Execution and Sale.

— Upon the embargo being made, the debtor will be summoned personally, or by publication if his whereabouts is unknown, as in ordinary suits, or in mercantile suits such notice may be served on the person in whose presence the levy was made, that the debtor appear in court within three days and pay the debt sued for and costs or present any lawful defense he may have against the execution, and notifying him to appoint an expert appraiser, like notice being given the plaintiff. If within three days the debtor does not appear and interpose any defense, or if it be decided against him in the special proceedings provided, the judge will cite the parties and make an order of sale of the attached property, which will first be appraised by the two experts named by the parties, with a third named by the judge in case of disagreement. When the appraisal is made and the parties cited, the property will be advertised for sale; in mercantile cases the advertisement, if for personal property, will be published three times in three days, and within nine days if real estate; the bidding and sale will be conducted in all respects as other judicial sales. During the suit the parties may agree that the property attached may be appraised or sold in the form and terms agreed upon, of which they will notify the judge opportunely in writing signed by them. (Civ. Proc., Arts. 1058-1070; Cod. Com., Arts. 1396-1414.)

TITLE II.

FEDERAL PROTECTION OF RIGHTS.

CHAPTER 1

THE "*JUICIO DE AMPARO*."

(*Código Federal de Procedimientos Civiles, de 1909.*)

Art. 817. Object and Nature — Explanatory Remarks.

818. Who Entitled — Parties.

819. Necessary Parties — Sundry Provisions.

820. Jurisprudence of the Court.

Art. 817. Object and Nature — Explanatory Remarks.—

Article 101 of the Federal Constitution provides that: "The Tribunals of the Federation shall decide all controversies arising out of: 1, Laws or acts of any authority which violate individual guaranties; 2, laws or acts of Federal authority which attack or restrain the sovereignty of the States; 3, laws or acts of State authorities which invade the sphere of Federal authority"; and in Article 102 it is prescribed: "All suits (*juicios*) mentioned in the foregoing Article shall be prosecuted, at the instance of the party aggrieved, through proceedings and forms of a judicial nature to be prescribed by law. The judgment shall always be such that it affects only particular individuals and shall be limited to protecting them and affording them "*amparo*" in the special case in suit, without making any general declaration in respect to the law or act involved." This language is copied substantially in Articles 661 and 662 of the new Federal Code of Civil Procedure, which adds: "When the controversy arises from the violation of individual guaranties in civil judicial proceedings, recourse can only be had to the Tribunals of the Federation after final judgment against

which no recourse is allowed by law which may result in its revocation"; the latter clause having just been adopted as an amendment to Article 102 of the Constitution.

From the foregoing definition of its purpose and scope, it appears that the "*juicio de amparo*" partakes of the characteristics and performs the functions somewhat of the writ of *habeas corpus*, the writ of error and the writ of *certiorari*. Its special operation is to allow recourse in all cases and by all persons to the Federal Courts for relief and redress against any act of any authority, judicial or administrative, which is deemed by the appellant to be a violation of individual guaranties or the rights of man. (Const., Arts. 101-102; Fed. Cod. Civ. Proc., Arts. 661-662.)

Art. 818. Who Entitled — Parties.— The "*juicio de amparo*" may only be applied for and prosecuted by the party prejudiced by the act or law above referred to, either in person, by attorney (*procurador*), by lawful representative, by his *defensor* in criminal proceedings, and also by any relation or even a stranger in the cases herein provided. A married woman and a minor may apply for "*amparo*" without the intervention of their lawful representatives when the latter are absent or unable to act (*impedidos*), or where the death penalty, banishment, personal liberty or any other act prohibited by Article 22 of the Federal Constitution, is involved; in case of a minor, the judge, besides any other urgent steps, will at once appoint a "*tutor dativo*" to represent him, the minor, if of fourteen years of age, making designation of the person. A married woman having interests opposed to those of her husband, although relating only to the ownership or possession of property, may begin and prosecute the process without marital or judicial authorization. A special clause in a general power of attorney is not required for this purpose, but is required for withdrawing the suit after it is begun.

The personality of the party petitioner must be evidenced

as required by this Code except as herein provided. If the act complained of arises from a criminal cause, the affirmation of the *defensor* will be taken as sufficient, but the judge will require the person in whose name *amparo* is sought to ratify the petition before proof is taken, or that the evidence of the *defensor's* appointment be produced. In cases under Article 22 of the Constitution, above mentioned, where the party aggrieved is unable to act for himself, anyone may do so in his name, but the judge will require his ratification immediately after making the order of suspension, and if not ratified the proceeding will be dismissed (*se sobreseerá*), except in the event that the party has been sequestered and the measures taken to secure his appearance are unavailing; in which event the judge will suspend the proceeding and begin a process against the authorities responsible for the sequestration, who will be punished as in case of disobedience to the execution of *amparo*. The proceeding may remain suspended for one year from its date, after which it will be dismissed if no one appears legally empowered to represent the petitioner and prosecute the *amparo* to final judgment; such dismissal (*sobreseimiento*) shall not prejudice the rights of the interested party or his relatives nor the action of the Ministerio Público, which may arise from the act complained of. In all suits of *amparo* the party aggrieved, the authority responsible and the Ministerio Público shall be considered as parties. (Fed. Proc., Arts. 663-670.)

Art. 819. Necessary Parties — Sundry Provisions.— The authority responsible is that which executes or attempts to execute the act complained of; if the act consists of a judicial or administrative decision, the authority which rendered it is also considered responsible. The following are considered as “aggrieved third parties” (*tercero perjudicado*): In civil proceedings, the opposing party to the party aggrieved; and in penal proceedings, the person who has appeared as the “civil party” in the process in which the

decision complained of was rendered, and only in so far as his civil interests are prejudiced by the decision; the "*tercero perjudicado*" is bound by the record of the "*juicio de amparo*" at the time he appears in it, and is entitled to only such terms and to render such proofs as are expressly granted herein.

Notifications in actions of "*amparo*" are to be made in the manner prescribed in Art. 673 of the Federal Code of Procedure, and within twenty-four hours after any order or decision is made. The computation of terms is made according to the general rules stated in this Code, except in cases of suspension of the act complained of and for the first report of the authority executing it, Sundays and holidays are included; no term can be extended, and at its expiration any party may move that the cause be proceeded with. Where the *amparo* concerns the death penalty, liberty, or other act prohibited under Art. 22 of the Constitution, or the military service, the Agent of the Ministerio Público must take care that the proceedings are not delayed, and the judge will continue his proceedings until final judgment or dismissal; in all other cases, failure of the complainant to take any action for twenty continuous days after the expiration of any term raises the presumption of withdrawal, and obliges the Ministerio Público to move its dismissal and the judge to dismiss it, even without motion. In the constitutional cases just mentioned, the *demandas* and all other pleadings on the part of the complainant may be verbal.

The District Judges must advise the Supreme Court of Justice of the institution of all suits of *amparo*, on the same day they are admitted. The *amparo* may be instituted on any day, where liberty is involved; and where life or any act prohibited under Article 22 of the Constitution is involved, any hour of the day or night is lawful to institute the *amparo* and proceed in it until the suspension of the act is ordered. In the absence of

special provisions, the general rules of practice prescribed in this Code will be observed. (Fed. Proc., Arts. 671-688.)

Art. 820. Jurisprudence of the Court.—The jurisprudence established by the Supreme Court of Justice in its decisions (*ejecutorias*) in *amparo*, shall only relate (*solo podrá referirse*) to the Constitution and other Federal Laws. The *ejecutorias* of the Supreme Court of Justice, voted by nine or more of its members, constitute jurisprudence, provided that the same point is decided in five judgments uninterrupted by another to the contrary. The jurisprudence of the Court in suits of *amparo* is obligatory for the District Judges. The Supreme Court will respect its own judgments; but it may nevertheless reverse (*contrariar*) the jurisprudence established, stating, however, its reasons for so deciding; such reasons must relate to those which were considered in establishing the jurisprudence which is reversed.

When the parties in a suit of *amparo* invoke the jurisprudence of the Court, they will do so in writing, expressing its effect and stating precisely the judgments in which it is established, and the Court will study the point relative to the jurisprudence. In the discussion of the case, and in the judgment rendered, mention will be made of the motives or reasons for admitting or rejecting the said jurisprudence. (Fed. Proc., Arts. 785-788.)

TITLE III.

THE "MINISTERIO PUBLICO."

(Law of 9 September, 1903.)

CHAPTER 1.

THE PUBLIC ATTORNEY.

Art. 821. Public Attorney's Office.— Functions.

Art. 821. Public Attorney's Office — Functions.— The Ministerio Público, in the *fuero común*, or ordinary civil and criminal jurisdiction, represents the interests of society before the regular tribunals of such order (*del propio fuero*), and shall be presided over by the *Procurador de Justicia*, with such assistant Agents as the law prescribes, or the Executive may appoint special representatives to appear in the name of the Government before the tribunals; the Office depends upon the Executive through the Department of Justice. The Ministerio Público must also, in the cases and manner provided by law, intervene in judicial matters affecting persons to whom the laws accord a special protection.

The attributes of the Ministerio Público shall be: 1, To intervene as the principal party or as coadjutant in civil judicial matters which in any way affect the public interests; 2, to intervene in the suits of succession and other judicial matters concerning absentees, minors, persons under disability, and public charitable establishments, in the cases and manner prescribed by the laws; 3, to conduct penal proceedings before the tribunals in the manner provided by law; 4, to assign criminal matters among the competent judges, and among the judges of instruction the *exhortos* received concerning penal matters; 5, to take care that the penalties imposed by the tribunals are carried into effect; 6, to formulate

judicial statistics in both the criminal and civil branches; 7, to oversee the stenographers assigned to the service of juries, the expert interpreters of the criminal courts, and the janitors of the palaces of justice, according to the respective regulations; 8, to intervene in the boards of vigilance of prisons, as provided in the regulations.

The Agents of the Ministerio Público are not subject to challenge (*recusables*), but should excuse themselves from taking part in civil or criminal matters where any of the causes exist for which judges should be excused according to the Codes of Procedure; such excuses will be accepted or not by the proper official, except as to the following, which disqualify them from taking part under any circumstances: 1, Relationship with any of the parties, their lawyers or attorneys, by consanguinity, in right line, without limitation of degrees, collaterally, within the fourth degree, and, by affinity, within the second; 2, a direct or indirect personal interest in the matter in litigation; 3, to be the partner, lessee, clerk, heir, legatee, donee, debtor or surety of any of the parties; 4, to have been the guardian or curator of any of the parties or to have rendered them services as lawyer, attorney, expert, witness or defensor in the matter being treated. The representatives of the Ministerio Público will take care that in the matters in which they intervene the laws are complied with and that there are no unnecessary delays, and in all cases they will make use of the proper recourses and may exact responsibility from the persons liable. (Arts. 1-4, 23-25.)

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